



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

Choate. Argument for the Division of
Worcester County. 1854

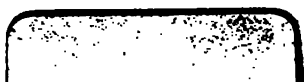
1.45



VS 13123,1.45



HARVARD
COLLEGE
LIBRARY



sent by the Secretary of the State, to the
the copy of an act to amend an act relating to
the subject, is said to be a better effort than the
first edition of the act.

ARGUMENT

FOR THE

DIVISION OF WORCESTER COUNTY,

ON THE

PETITION OF O. L. HUNTLEY AND OTHERS,

BEFORE LEGISLATIVE COMMITTEE, APRIL,

1854.

BY HON. RUFUS CHOATE.

PHONOGRAPHIC REPORT. A. C. FELTON AND RUFUS LEIGHTON.

[NOT REVISED BY THE AUTHOR.]

BOSTON:

WILLIAM WHITE, PRINTER TO THE STATE.

1854.

US 13123.1.45



Miss Alice V. V. Brown

W

ARGUMENT.

I HAVE so many reasons, Mr. Chairman and Gentlemen, to be indebted to the committee for their kindness to me, that I almost lose sight of the perhaps, incurable injury which so long a delay may have occasioned to my clients, the petitioners. It is not merely or mainly, that two very able addresses from gentlemen on the other side, have rested so long unanswered upon your memory, nor that your opinions may very probably have been taking shape in your own minds, consciously or unconsciously to yourselves; but it is that Time — our great enemy — has brought us again to the last moments of a session. It seems, therefore, that I have more to do than when I parted from you, with less encouragement to try to do it, and the duty has devolved upon me, at last, in an exceedingly imperfect state of health.

It will not have escaped the recollection of the committee, how much both of the learned counsel who addressed you — perhaps, I may say, in the absence of more decisive matter — had to tell the other day of the majority, within and without the proposed new county, opposed or indifferent to the measure itself. I do not wish to compare one part of the two very able addresses to which you have listened with any other part of them; but it struck my own mind that this, perhaps, was the most effective and telling of the topics in the addresses of

both gentlemen. And yet it does seem to me — if I have not failed to appreciate the facts or the principles before you — that, as matter of fact, it was in a very extraordinary degree misconceived and misunderstood by the learned counsel; and, as matter of argument against the petition itself, it was entirely over-estimated by both of them.

A word or two upon this subject before I advance to the merits of the case. We are here to ask — not arrogantly; not impudently; not affrontively — as one of the gentlemen was pleased to describe our repeated applications to the legislature, for a less burdensome administration of justice; still less in any disregard of the deliberate action of a former legislature; but with great earnestness and much hope, as parties who have an object of great importance at heart to present to the constituted representatives of him who petitions for right and for justice in this commonwealth; we are here to ask for the establishment of a new county, for the general and comprehensive reason, that every one of the objects for which counties are created at all, will be, on the whole, attained far more completely and equally, to the entire mass that are here to be affected by this measure — as a mass — than now they are: thus working out an appreciably large and permanent addition to the public convenience and accommodation. We are here to submit this proposition upon the evidence, by asking you to consider the proofs which we have laid before you, in very close and very detailed reference to the great ends for which counties are established; the true tests by which their success or failure is to be determined; and the great principles, according to which they are to be made and altered. And in trying these facts by these principles and standards, our appeal is to you, representing the legislature; and not to the fancies or whims of anybody out of doors, here or there, who may sign this paper to-day or that to-morrow, on influences irrespective of the merits of the controversy itself. You are here made by the Constitution the proper examiners of this question: and I apprehend you will agree with me, that your labor, and duty of investigation is not assisted in the slightest degree by being told what this man

this year, or that man last year, out of doors, says on the subject. I am here to show, if I can, according to the principles appropriate for this matter; an exigency for the division of this county; that is to say, I am to show good reason for the granting of the prayer of this petition. But I am not here to show in addition to this, that everybody else has coolness; civil discretion; deliberative capacity; disinterestedness, and impartiality to judge as well of that exigency as you can judge for us.

In the matter of the exigency I have great pleasure in meeting the learned counsel on the other side. But I still feel bound to pause for a moment or two on the subject — on which I am entirely persuaded they have fallen into important errors — of the state of opinion outside of this legislature. They say there is opposition to this measure, for example, outside of the proposed new county, to some extent in the county of Worcester, and in Middlesex. But is it in the least degree extraordinary, that that should be the case; that very many individuals in old Worcester should prefer to have things just as they are? Is it not the most natural result in the world, and also in the same way, that a few individuals in old Worcester, feeling strongly on this subject, and exerting extraordinary pains to touch other individuals, should have produced something like a re-action of public sentiment, and been able to win signatures — at least to refer the matter to the people — from the many who care less? I respectfully submit to you, that here also there is nothing in the least degree to be wondered at, and nothing in the nature of an argument against the intrinsic justice of the measure itself. Was it not to be expected that we should encounter an animated opposition from old Worcester? — and is it not entirely inevitable that her press, her wealth, her men of business, her bar, her society, her aggregate influence of all kinds — the fruits and the power of that intense centralization which is perhaps one of the very ablest of which we come here to complain — should here and there be able to touch somebody, clear out to the utmost amplitude of her borders? Why, what can that beautiful and important city desire better, than to remain, as she remains to-day, the centre of the existing system of things? Is

it not a condition of things that keeps her court-houses open year in and year out, in some form, 215 days in one year — and 230, or 240 or 250, it may fairly be calculated upon as the average of her terms for the future — a state of things that fills her boarding houses and hotels with the thronging attendants upon so much litigation ; a state of things that puts into the hands of her men of business the keys of the whole custom of the county — giving them an element of competition, against which no other trader can possibly make head ; a condition of things that brings to her bar fat terms and flowing fees at home — without any of the embarrassments and inconveniences of circuit service ; and, above all, a condition of things that enables her everywhere, acting upon the heart, the pride, and the fear, of this wide provincialism, distributed over that vast territory, to assert and hold fast a power — I do not say that it is not in the main beneficent and beautiful — but a power secret and resistless? Permit me to ask — I intend to find in this fact an explanation of some of the evidence upon which so much stress has been placed by the other side — where there was ever a city, in the history of civilization, that at once tasted all the sweets of metropolitanism like this, and then voluntarily surrendered them without a sigh? Where was there ever a state, or city, or man, that watched without emotion the dawning of a new and formidable rivalry like this? Is it not perfectly natural that she should look upon the parvenue and rugged growth of Fitchburg, with something of the same feeling, scornful and jealous, with which the Earl of Wharton looked upon the twelve new peers, created in the reign of Anne, and expressed his contempt by asking if they did not vote by their foreman? Every thing illustrates the same feeling every where. Just remember how hard those that loved us, as well as those that hated us, held on to us nevertheless in the great times before the breaking out of the Revolutionary war. Recollect how the government of Massachusetts Bay held on to New Hampshire — clear up to the crystal hills and the sources of the Merrimack — until, granite and all, she was wrenched out of our hands by the main strength of the mother county. Do you not believe that when, in 1793,

Norfolk was taken off from Suffolk ; and, in 1831, when Worcester herself was curved out of old Hampshire and Suffolk and Middlesex, every one of those old counties seemed to feel a pang as when a giant dies ; whereas it was nothing but a beetle being born ?

Now all this seems to me to be the most natural possible condition of things in the world ; and from a feeling like this, so far from being surprised to find opposition in our own circle and among our own numbers, I submit to you that I present a perfect explanation of the fact, irrespective of any supposition of any real change of opinion on our part, and irrespective of the real merits of the case. Suppose, for instance, that as long ago as 1819, the intelligence and forecast, by which the County of Worcester has always been governed, had conceived the alarm that there was danger of that happening — always a real danger — a mere question of time, as Mr. Wood says — would it be very extraordinary that she should have begun as far back as that to reach all her policy forward, here and there, and thus to anticipate, and if possible postpone the evil day ?

Would it be in the least degree extraordinary if, as long ago as that, — partly by her system of laying out highways ; partly by the palace-like style and cost of her county edifices ; partly by the general and unsleeping tone of her press ; partly by the offer of her corporation capital for subscriptions to railroad stock ; partly by her conventions here and there ; she should have begun to shape that policy against separation, with which, ten thousand times more than with the merits of the controversy, we find ourselves contending to-day ?

To show you that that proposition is not at all extravagant, — and to show how long ago Worcester took this alarm — a single exemplification of the myriad formed influence which she at once put in active operation to anticipate and prevent what she so much dreaded — will you permit me to read a page or two from a discourse delivered before the Worcester Agricultural Society, in 1819, by Levi Lincoln, then in the early flush of his justly deserved, and afterwards justly rewarded popularity.

He proceeds thus : —

"Permit me also, on this occasion, Citizens of the County of Worcester, to advert to the geographical extent of your territory, and the political importance of your population. Stretching a distance, almost of sixty miles, from New-Hampshire on the north, to Connecticut and Rhode-Island on the South, over a rich, improved, and highly fruitful country, comprising within its boundaries more than seven hundred thousand acres of land, already bearing upon its face of a free, a hardy, an enterprising, and, I trust, of a virtuous and patriotic people, exceeding seventy thousands souls — can you for a moment doubt of your physical resources, distrust your moral influence, or be regardless of your weight, through your right of representation, in the councils of the State? Now that Maine may be considered as separated from Massachusetts, this great county which you inhabit, and which, as an *integer*, you may be justly proud to contemplate, remains in territory almost *one-fifth*, and in numbers *one-seventh* of the whole commonwealth. With similar pursuits for employment, and common interests to cherish — with united feelings to direct, and combined efforts to accomplish, anticipation can neither graduate the rate, nor prescribe the limits of your future progress. Let this day be as a starting post in the career of your improvement. Be just to yourselves. Preserve, I conjure you, preserve your territorial integrity. Whatever else is suffered, let not the destroying spirit of *division* produce dismemberment. Look for admonition to the meagre, scrimped, and belittled things, the offspring of carved-up corporations — where from poverty there can be nothing wise which is liberal, nothing public which is noble! Regard with complacency the proud pre-eminence to which you have attained in your public establishments and edifices — the monuments alike of your wealth and of your munificence, in which every citizen has a property, and the community distinguished honor."

Behold there, gentlemen, an explanation, to some extent, of the influences which may very naturally have produced some appearance of hostility or indifference to our measure among ourselves. I wish I could leave that topic exactly there, but I

feel bound to pursue it a few paragraphs further. The learned gentlemen on the other side say there is a majority against us or indifferent to us, within our own circle.

Sir, I may be permitted to say, in the first place, that the mere circumstance that there are fewer towns or persons for than against the measure, within the territory itself, never has influenced the legislature — I pray your attention to that remark — it never has influenced the legislature in any stage of the history of this commonwealth. On the occasion of dividing, for instance, that old and charmed Hampshire, it had not the weight of a feather on the legislature. I cannot find anywhere that it has ever exercised the least influence on the action of any legislature, or any committee. If you will permit me to refer you to page 11 of the report of the committee of last year, you will find they took some pains for the purpose of reminding the legislature that on two or three former occasions of the division of a county, the numbers, so far as they were demonstrated even within the area itself, were against rather than in favor. Sir, is not the truth, then, that the legislature is alone the judge, eminently the fittest to judge on the merits of such a matter as this? Is it unprofessional or unmanly adulation to the committee to say that if you have the data; if you have the facts; if you have time to deliberate; then, gentlemen, being wholly impartial and in a condition to survey the whole ground — measuring every argument presented to you; and looking at the true ends of county existence — *you* cannot well fail, one way or the other as it may be, to decide it rightly. On the other hand, I submit to you that it is not a remark at all unjust to say, that the parties were a great deal too near the subject-matter to see it aright. Every town, and almost every man, upon the proposition of a division of the county feels something like a personal interest in the matter. Every town recognises at once that perhaps it has as good a right to be a shire town as a great prominent applicant. Why, you had a witness on this very hearing, who swore that as a trader in a town adjoining Fitchburg, he could not deny that he was not conscious, that to make Fitchburg a shire town gave every trader in Fitchburg an advantage in compe-

tition over him; and, therefore, I respectfully submit to you that the judgment of individuals—men or towns—on a question like this, are scarcely worthy to be weighed. The act to be done is like an act of government; complex; requiring combination; balancing; thought; freedom from partiality; freedom from narrowness; and I respectfully submit that the legislature alone is competent rightly to perform that act—and is to disregard the prejudice; or the indifference; or the blindness of a whole region itself; and, looking to its true interests, give it what it might not ask. No county is to be made or refused because the people say they do not want it; or because they do not speak; but because you, gentlemen, appointed by the Constitution to make and unmake, say that it is or is not needed.

I cannot leave this matter, however, exactly here, but I am bound to go on, and submit to you that my friends on the other side have entirely misconceived the true explanation of the matter of fact touching the influences out of doors this day. I have heard that to read history aright you must read it through the two eyes of chronology and geography.

Sir, they have been inattentive to the chronology of this business, and thus have entirely failed to appreciate the causes and succession of events. And when I have submitted an explanation of this evidence, founded upon a consideration like that, I apprehend that I shall be no longer embarrassed, in coming at once to the merits of the case, by any who have declared against it. There are two epochs in the history of this matter,—I mean so far as the demonstration of public opinion out of doors is concerned. The first of these extends down to the end of the session of 1852. I pray your attention to my division of the topic. What do you find the state of facts to be here? Exactly this:—It seems that in 1828 an application was made for a division, but that was unsuccessful; and then the matter slept till 1850. We know nothing of the original application of 1828, except that it was referred to the people of the whole county to pass upon; but the numbers for and against, within the proposed new territory itself, are not presented to us; and then the matter rested till 1850. And

now begins what I call the first epoch in the history of this outside part of the case. In 1850, the subject was brought before the public, formally, openly, and above board, by us of Fitchburg, and behind no man's back, in man-fashion, by conventions; by lectures; by discussions upon the stump; by controversies, conducted on one side by friends, and afterwards replied to by the opponents of the division, and carried on for two or three months — thus openly, in 1851, the desire assumed the form of an application for a new county, with 4505 petitioners, very near a majority of all the legal voters in the territory, and far outnumbering the remonstrants; in 1852, an application was made for a half-shire, which then, and now, and always has been, more earnestly resisted than the application for a new county; and in 1853, the desire re-assumed the form of an application for a new county, and a committee of the legislature reported a bill for its creation. That is the first epoch in the matter. So you see — and here is the answer on which I so much insist — that when, in 1850, the subject was brought before the public, openly and fairly; when the statistics were exposed; and when Mr. Crocker, and such as he, advocated the division in open convention, and in assemblages of the people, and were replied to by gentlemen in opposition, with equal openness on the other side, — *then*, I say, we had a majority of everybody, certainly a majority of the voters within the proposed new territory itself — in favor of the measure. And I shall show you in a moment that this continued down to 1852, and was apparently the state of the public opinion, in this behalf, as developed by the report of the former committee, and by the evidence in this case. From 1850 to 1852 we had a majority, or, at any rate, nearly a majority, more to petition than to remonstrate, within the proposed new county itself. Yes, these very towns in Middlesex — so eloquently represented by the gentlemen on the other side — now supposed to shed tears of blood, and to utter groans from their roots in the earth, to obtest against the impiety that would sever the old from the new, for two years after the subject first came fully and fairly before them, either presented actual

majorities in favor, or, certainly, very large numbers of persons — more petitioners than remonstrants. Even Groton, so anxiously and ably represented; Groton itself, — such is the testimony of Mr. Butler, — at that time numbered a majority in favor of the application. Mark then, I repeat again, the chronology of this transaction! This was in 1850 and 1851, and it was upon the original announcement of the measure, and upon the fairest discussion. And I may be permitted to pause for a single moment here, and submit that this is a pretty good reason for believing that the eloquent feelings of my friend on the other side, protesting so classically against separation, were not very extensively shared, then or now, by the five towns in Middlesex. Sir, if the heart speaks to a proposition, it speaks instantly. The first answer utters the sentiment of the heart. I suppose if I should propose to a child under age, on whom his father had devolved the weight of his labors, to desert him, demand emancipation, and help a rival set up a fatal competition for himself against the old man — the spontaneous, irrepressible, and instant sentiment would be an indignant refusal, accompanied with a passion of tears. My friend will allow me to remind him, that when our grandparents set out on that exile from Eden, from which our race has never returned, the great poet tells us of them :

“Some natural tears they dropped, but wiped them soon.”

The first impulse was tears. My learned brother's clients ran off with great alacrity in 1850, and never began to cry at all, until three years afterwards; and now they are vicarious and rhetorical tears. That is the first epoch.

Now I pray your attention to the next epoch; and see whether you do or do not find any explanation of what I have stated. What happened? Nobody knows better than Col. Lee. I will tell you what happened. When we found, as in 1852, that here was a subject that approved itself to the discretion of the legislature; when we found that after one full and fair, or rather reiterated discussion of it before the people, we commanded a majority, and after it had been presented to the legislature with a successful result; we discontinued from that time

forward all manner of active exertions to create and maintain a public sentiment out of doors,—and I submit, there is not a particle of evidence, that from 1850 to this instant we have lifted a finger anywhere ; but have respectfully and earnestly come here to press our application at your feet, at which, without subservience, yet with the highest degree of respect, the citizen is evermore to lay his petition. The gentlemen upon the other side have been able to attend this investigation more than I have, yet I have not been inattentive to what has gone on ; and I repeat, that there is not a particle of evidence, that from 1852, Mr. Crocker or anybody else, at Fitchburg, or any where else, lifted a finger to exert an influence and obtain names from the outside of this chamber. No, Sir ! Year after year they have found us here with our statistics and our appeal ; and here we shall be found —and I hope it will not require that we come again —until we find the reason of our appeal is responded to by the great judge.

But what has happened on the other side ? The moment they discovered that our application could command a majority of petitioners ; above all, when they discovered that it commanded a report in the legislature ; then you find gentlemen in great numbers, — of weight and respectability, — Col. Lee, Mr. Bassett, Mr. Brooks, Mr. Bellows, Mr. Thurston, and all the rest of them : gentlemen of very mature age ; fixed opinions ; old leanings ; agriculturalists, many of them — their ties of business and of friendship fast and strong, as by links of iron, allied to old Worcester : you find these gentlemen, and such as these, entering into a systematic, yet, after all, rather secret exertion to create a show of public opinion against the new county itself. I respectfully put it to you, that several of those gentlemen have with all frankness admitted the fact before you on the stand. However, have they been openly before the county ? Not quite. Have they called an open convention to discuss this matter, face to face, man to man, upon the stump ? Have they offered a lecture ? invited an adversary ? Never ! Nothing in the least degree like it ! On the contrary, the series of their measures from 1852 down to this instant — it is so by the evidence of Col. Lee —

has been the assiduous circulation of a body of pamphlets like one that I hold in my hand, entitled "Some of the Objections against the division of Worcester and Middlesex;" and another of them, the speech of Mr. Mason, of Worcester, full of pretty important statistics, if you allow it to go out without reply. It is to the circulation of pamphlets, like these, that they have devoted their exertions—I know I speak within the hearing of gentlemen familiar with this controversy—and by means like these that they have been counter-working the original indications of public opinion, to which I have referred. Now, why such gentlemen should take this course, it is needless for me to inquire. But I beg you to consider that every one of them are elderly persons—not the worse for that—but then the maturity of age brings the characteristic influences of its time of life; not in a situation to have observed the practical workings of the administration of justice in this expanded extent of the county of Worcester; several of them living in towns substantially agricultural, and therefore very little benefitted by any change in the administration of the law—for our agriculturalist may reckon among his prime felicities that he has little to do with litigation: many of them men of permanent fortune, like Col. Lee, bound to old Worcester by the ties of many years of political and personal connection, and who would not deny to me now, out of doors, that he did not feel conscious that he looked upon little Fitchburg as a "young," and, in some sort, suspicious "America"—and I submit to you, that it is a matter of course for such gentlemen as these—constituting committees or agents, and on every occasion manifesting the zeal by which they are influenced—by extending themselves through the county; by presenting one motive to this man and that motive to another; by telling another that land will fall five and twenty per cent. the day that the bill for separation becomes a law; by flattering Athol with the idea that she ought to be a shire town as well as Fitchburg; by telling this man if you will hang off a little, you can have the court-house as well as she—I submit to you, that it has been perfectly practicable, and it does not require that I should speak longer on this—at last sowing tares

while we slept, to bring up a majority of persons in these towns to sign a little remonstrance, expressing no opinion at all upon the merits, but only saying, we desire that the matter should be referred to the people : it has been perfectly practicable, and it is exactly what they have done. And therefore I put it to you, with entire confidence upon the facts, proofs, and explanations, that, attending to the order of events, and the train of causes and sequences, there is not a particle of evidence before this committee to-day, that the sober and second thought of the locality more immediately interested — if it were brought directly to act upon the matter, upon a full and fair discussion of it — would not declare in favor of the measure.

It is almost painful to recollect some of the topics which we know our friends have been induced to employ, by which they have sought to produce effect in this case. There is that railroad — that is to be — through Gardiner, or Barre, or somewhere else. If that railroad is ever made, and does one ten-thousandth part as much work after it is done as before, it will be the best paying stock this side of California. Mr. Lee says if that road is built, the county will not be divided. I do not understand that. The building of that railroad brings two towns — Petersham and Hubbardston — nearer Fitchburg than now. But who knows that it will be built? I would trace the history of that road, but it is perfectly obvious that the whole affair is a dream — mere moonshine. I must pass on to the consideration of more urgent matters.

I leave the subject of the expression of public opinion in this matter ; and, turning from all that to the legislature, which is to judge of this exigency, I respectfully submit to you, gentlemen, that we make a perfectly clear case of an exigency for the division of this county ; by which I mean nothing but a sufficient reason. We show a perfectly good case for the establishment of a new county, according to every principle by which that kind of legislative discretion is ever guided.

And now, what is an exigency? My learned friends kept calling out for us to maintain an exigency ; but I did not hear

either of them undertake to tell what an exigency is; and, therefore, I think it is incumbent upon me to take a little pains upon that proposition, and to do all I can to state in particular what is the occasion for the establishment of a new county. And may I be permitted to read with some care what I submit will be an approved formula for legislative action in this matter. I submit, therefore, that if it appears in proof that so many towns and inhabitants of Worcester and Middlesex as, — by their numbers; their contiguity to each other; their wealth; their growth, and extent of territory, would compose a county of respectable, and sufficient, and convenient, and average dimensions and character — are now, as a whole, to a real and considerable degree incommoded in the transaction of those affairs for which counties are organized; and would derive a real and considerable increase of accommodation and convenience in the transaction of such affairs, by being erected into a new one; and if it further appears that such erection into a new one would not, to an appreciable and real degree incommode and injure the remaining towns in the counties of Worcester and Middlesex in the transaction of county affairs; there is a case established, or I say all reasoning upon this matter is at an end. You see, in a moment, that some of the language which I employ, is vague and flexible from the nature of the case. But it is the best language I can employ; and with a further view of anticipating criticism upon the vagueness of this phraseology, I will repeat; that whenever in the ordinary and accurate use of language by educated men, the degree of inconvenience may be characterized as inconsiderable, and the degree of accommodation that will be gained by the change, may be characterized as considerable and real, then the case is established within the conditions upon which I insist.

Now I have to ask your attention to this principle — whether or not it is a sound one; and, if so, do we present a case within it in point of fact? In the first place — I pray you to watch the formula as I have enunciated it; and here I insist on three conditions in order to make out an exigency. — I agree with the other side, that the new county must

possess, in area; in numbers; in wealth; in labor; in sources of growth, in its present and in its future; the elements of a respectable county. There is no doubt at all, that in the constitutional theory of the thing, you would desire to extend to every inhabitant of Worcester an exact equality in regard to county privileges. But, I agree with my brother, that if in running this theory out, you find it would require, either very great numbers of counties to be created; or, in a given case, the creation of a county so small as to be justly denominated insignificant; so that we should reluct at its creation; then that desire must be qualified by the practical state of fact. Nothing, for example, but a geographical or physical necessity would induce me to create another Duke's county, of 4500 inhabitants; or Nantucket, of 9000 — respectable as are both of these: and, therefore, as that geographical or physical necessity does not exist in this case, my proposition agrees that the new county — or any county — which we propose to establish; which comes here to the legislature and craves and asks to be relieved; shall be of respectable and average dimensions and character — judged by every standard, on which the respectability of a county may be established. Then I start with that condition, and respectfully ask if my whole proposition is not a sound one: that if there is an area, and a mass large enough for a respectable county; if such an area and mass are really, considerably, increasingly, incommoded in the transaction of strict county affairs; and if they would derive a considerable and a permanent increase of accommodation for county affairs; and the residue in those respects, for those objects, for which counties exist, would not be incommoded; a case is made for the establishment of a county. I hardly think it is necessary for me — because I believe the proposition commands the assent of every human being — to attempt to enforce this principle as a sound one upon the judgment of the committee. One or two words only will do.

If here is a mass of interest large enough for a county; is it not entitled to have everything which county existence can give to it, in the fullest practical manner and measure? If it is not now having everything, in that way, and in that degree, and

can have it by being set off; and yet leave the residue every thing which county existence can give to it; ought it not to be set off? If, for example, the pursuit of that justice, criminal and civil, to which the Declaration of Rights says we are entitled — certainly; freely — that is to say by not paying more for it than our neighbors; promptly and without delay — that is to say, without more delay than our neighbors experience; if the pursuit of that justice is more burthened; more tedious; more costly, to us as a mass, than in a new county it would be; and we can have our justice lightened of that burthen, without having a farthing added to the burthens of our neighbors left behind, can there be a doubt that we are entitled to that relief?

What is a county for? To attain certain ends, for which that organization is needful.

Should not we, then, so dispose of our county arrangements as to give us the largest measure of those particular ends? You will all say, certainly; unless this prevents those left behind from attaining the true ends of county existence, in the like large and appropriate measure belonging to them. But permit me to say, that it is no reason at all why this area should be deprived of its full share of all the ends of county organization; simply because if you give it to them it lessens the wealth; the power; the pride; the prestige; the historical charms and attractions, of the great residence of old Worcester, or old Middlesex. I shall by and by have occasion respectfully to submit to you that it does neither one nor the other. But, if it did, it comes to nothing unless you can show me that it embarrasses and hinders the attainment of the specific and true ends of county life. If, for example, they could show to-day that it would make justice dearer; harder; slower to attain, than now it is; that perhaps might constitute something like an objection to it; because the administration of justice is one of the chief ends for which counties are organized. But may I be permitted to say, with entire good taste and good feeling, towards Worcester and Middlesex, that they are not established to confer political power, or interest, or attraction, upon anybody that is embraced within their sweep. They

were not established to centralize political power or influence here or there ; or to give artificial intensity and effectiveness to any collections of men here or there ; but they were made ; as Lord Brougham said — or Edmund Burke, who is a much higher authority — “ to bring twelve good men into the jury box,” at last. And therefore I repeat my proposition — and submit that no man in the legislature will qualify it, even — that if we present you the case of an area large enough for a respectable county ; if we show that, in those purposes for which a county is founded, it is touched and grieved to-day ; and that it may be appreciably, and materially, and permanently relieved to-morrow ; and yet leave the great residue of Worcester and Middlesex just as they now are, for every end for which county existence is organized ; then I submit we present a case entirely satisfactory to the judgment of the legislature.

Let me rest there a moment, and breathe the invigorating air of an earlier day, by reminding you that the history of counties in Massachusetts is one form of the exemplification of the principle that I contend for. Mark you, that I am struggling with that invisible enemy that swells in my own heart, and in yours ; that invisible enemy that says — spare the attractive and existing county : I am working against that emotion of my own and of yours, and I am putting against it the true legislative proposition, that the county is made for the ease and convenience of man, for two or three single and specific ends ; and therefore I submit to you that if your predecessors could divide the old and beautiful county of Hampshire, on that consideration you will not want the firmness and control of yourselves necessary to do the duty which we ask you to perform.

This then little Massachusetts of ours was divided into counties in 1643. There were originally three of them only : Suffolk, Middlesex, and Essex. I say three. There was a fourth called Norfolk, but it was for that part of Massachusetts chiefly now New Hampshire ; and I therefore lay that out of consideration. Our Massachusetts in 1643 divided herself into three counties. What were they made for ? “ For the ease of the people,” — I repeat the fine, manly, Saxon, compre-

hensive reason then given for the making of counties; it was for the "ease of the people." Sometime between 1643 and 1680, (Historical Collections, vol. 8, 2d series, page 333,) the Governor of Massachusetts was called on by the Privy Council to make a report of the condition of Massachusetts. In that report he states the fact of the division of Massachusetts into three counties, and proceeds to say: that it had been done for the establishment of county courts "for the ease of the people" in the administration of justice. That has been the legislative object for 200 years—promulgated for the making of counties; "the ease of the people" in the administration of justice, through their county courts. That was the end for which they were made then, and for which they have been altered and modified from that day to this. And, therefore, whenever the "ease of the people" required a new one, a new one has ever readily been yielded, and on some occasions large concessions were made; as in the case of Norfolk itself, when we gave the citizenship of Fisher Ames—worth many water-falls, and much area—and many more material memories; and on another occasion when we divided the attractive old county of Hampshire, endeared also by many memories, and especially by the memory of that day when she stood side by side with us and adopted the Federal Constitution, against the vote of the inland, which was on the other side.

On this principle, I say, our whole county system has been built up. Under the influence of it in 1662 we created old Hampshire, then consisting of nothing but Springfield, Hampshire, and Hadley. In 1685 the little "Old Colony of Plymouth,"—not then having ten thousand persons—was made into three counties—Plymouth, Bristol, and Barnstable, "for the ease of the people." In 1731, also for the exceeding and still greater "ease of the people," this very county of Worcester was carved out of Suffolk, Middlesex, and Hampshire—every town within one of these,—for the mere "ease of the people." The same principle, in 1760, gave life to Berkshire. In 1793 or 1794—varying, perhaps, as you reckon from the commencement or the consummation of the act,—we broke Norfolk from Suffolk, and gave her to herself.

Now, I am hereafter to glance at the number of these counties when severally created. Thereby hangs an argument of great weight,—the numbers and valuation of these counties when they thought they constitute a mass of incommodity, which it was for the legislature to relieve. I mention it just now, to remind you of the recognition ever, of the principle that it was “for the ease of the people,” in the attainment of justice judicially. I had made a reference to a passage, in which De Tocqueville calls attention to the fact, that whereas the town lives in the heart of the citizen, the county is a mere convenience; a mere abstraction, to which no man’s heart is wedded; which serves no purpose but the convenience of the people; and mainly in the administration of their justice.

I have done with the principle, and now I respectfully submit that I bring my case up, in point of fact, to that principle completely. In the first place, I submit to you that the proposed new county, in the number of its towns; the amount of its wealth and labor, in its present and future; as the elements of a respectable county, measured by any standard, and any time. That condition I am now to satisfy. You are very familiar with facts, and, therefore, I can, in the briefest possible expose, take my leave of them.

The new county will have, if you include all named within this area, twenty-three towns. I need not stop to remind you that you are not of course confined to the particular enumeration of the towns embraced within our area; and there may be a case of one or two towns here in this aggregate, between which and the residue the committee might draw a line of discrimination. I see none such, and I am obliged to take the actual area; and, therefore, I say that we shall comprise twenty-three towns; as many as Norfolk; as many as Hampshire; more than Plymouth, or Bristol, or Hampden, or Barnstable, and of course Dukes and Nantucket; substantially as many as Franklin; and just about as many as Berkshire.

In the next place, in its area, which is 717 square miles, it will be larger than any county in the State, except four, Worcester, Berkshire, Franklin, Middlesex. It will be larger than old Essex, with all its 120,000 or 130,000 souls.

And, in the next place, in numbers, allowing for the increase of population since the last census was taken—it may be proper to bear in mind that the census was taken under the authority of the United States, and the other under that of the State, and differ somewhat, but not materially—it would not have to-day much beneath 48,000,—more than six of the counties which now pervade the State; more than any county in Vermont; or in New Hampshire, except Hillsborough.

But in order to see what it is, and what it is to be; and what it deserves, you are to look a little further than the number of its towns, or its area in square miles. What is this county to do?—for I speak of it in the fullest confidence that it is to do. What is the character of its labor? What has been its growth? What is its valuation? What are its contributions now to public and private wealth; and what has it got to develop, upon which we may reasonably expect to draw?

Certainly it is not, as an aggregate, the best portion of the agricultural territory of Worcester. It will hardly deprive that county of its richest agricultural returns—its wheat and cattle—though it has some good farming land. Its true character is—and it is on this ground somewhat that I ask leave to present it, not to the favor of the legislature, but to their perfect appreciation—that it is the seat of the busy and robust arts—the middle descriptions of art,—the arts pre-eminently suited to, and characteristic of, the people of Massachusetts. It lies along and forms the valley of the Miller River, running to the west into the Connecticut; and of the Nashua, running to our own Merrimac;—quite regular in its geographical shape; and above all, it is itself the valley of those other and nobler streams, the Fitchburg, and Cheshire, and Vermont and Massachusetts Railroads,—that great iron way, bearing upon its bosom, now and in all time to come, not merely wealth, but more of the stimulation to wealth than either of them all; and it is a very interesting fact that,—availing itself of that power of water, only a small portion of which as yet has been called into life, and stimulated by those artificial facilities,—it turns out an annual manufactured production of

little less than seven millions of dollars. Its valuation exceeds to-day that of Hampshire, or Franklin, or Berkshire, or Barnstable, and is all of twenty-five millions of dollars. In regard to statistics of this description, a single observation may be made ; and it is, that where we felt the fact was in no real controversy, we have contented ourselves with the production of a single witness or two ; and upon this point we have produced Mr. Crocker and Mr. Mansur. Then you will also allow me to remind you that this is a case pretty sharply contested ; but the other parties have not offered a particle of testimony to controvert the facts of these estimates in the slightest degree. When I have made an additional statement I am ready to leave this interesting first fact ; and that statement is, that the materials and capacities for future and indefinite growth — upon the testimony, also uncontradicted, in this case — are there. It has been stated that 50 or 55 per cent of the water power is wholly unoccupied ; and that 45 or 50 per cent is more or less occupied, but none to the full extent of its capacity ; and therefore there remains this 50 or 55 per cent behind, waiting development, to be assisted and encouraged.

Now such a people as this make no gewgaws ; statuettes ; perfumery ; or looking-glasses — not yet ! The products of the industry of this locality are not the luxuries of art, in any form. On the contrary, it is the industry of, and for, the people — the industry of freedom ; and I have great pleasure — I hope you will indulge me in it — to remind you, very briefly, of three or four of the forty-eight or fifty different descriptions of handiwork which the men, women and children are contributing to-day to the public and private wealth of the state, and of the land. There are said to be, by Mr. Crocker and Mr. Mansur, — and it is uncontradicted, — forty-seven or forty-eight or fifty different descriptions of manufacture, in the town of Fitchburg alone, not one of them yielding less than about a thousand dollars in the year, and some more than one hundred thousand dollars. Among these are manufactures of paper, to a very considerable extent ; wooden furniture and ware, — including particularly chairs ; almost all the fabrics of iron ; machinery for factories ; scythes for farms, — to a larger extent,

and sold over a wider market, than by any other town in any other county in the United States; palm leaf; cutlery; edge tools—a various, robust, wholly useful description of manly art, as enters into the mass of New England labor. Let me read from the testimony of the witnesses for a moment, a statement or two connected with these always interesting statistics. It was said by some of the witnesses that the chair business in Fitchburg alone furnishes employment for about 150 men; and besides this, cane-seated chairs are seated away from the shops, in families, and furnish employment for a large number of women and children at home. It is in evidence that the machine shops alone give employment to about 200 men. Their paper mills employ about the same number. It was also testified, that the productive industry of Fitchburg has increased, since 1850, from 65 to 75 per cent. Fitchburg turns out more scythes of the first quality—and Leominster more combs—than any town in the United States.

But time would fail me to pursue that inquiry further; and I leave it to the general and undoubtedly minute recollection of the committee. One fact, however, more in connection with this, I think I ought to present; because possibly it may be said that this is already an exhausted growth. Let me bring two or three facts to your minds, very remarkably illustrating the certain future of such a locality. This Fitchburg Railroad touched that entire region to life in 1845. There was next to nothing of it before that time. These 18 towns in Worcester, from 1830 to 1840, had increased only 316 in all their inhabitants; while from 1840 to 1850 their numbers increased 5673. In the eight years before 1845 the manufacturing produce of these 18 towns was only \$530,000 per annum. In the five following years it had sprung to \$1,715,000; or more than three times as much per annum.

I have already reminded you that the annual product to-day, of the whole new county, is not less than six or seven millions. From 1830 to 1840, the increase of valuation in these 18 towns, was \$2,359,000. From 1845 to 1850 it was \$5,900,000—more than twice the aggregate increase; and all that increase really, or substantially all of it, in the latter

half of that time. In 1837, the annual manufacturing productions of the 18 towns were \$2,000,000. In 1850, it was more than \$4,000,000; and every cause of growth is operating to-day. The water power is there, and more of it is behind; the railroads are there; the capital is invested, or awaiting investment; the markets are enlarging every where under the policy of the state and the policy of the Union. I beg to add — because by and by it will come to bear with a great deal of urgency upon one of the principal views which I have to present — that this industry and this growth are almost exclusively within the valley of the existing railroads. It is a growth in Leominster, Fitchburg, Ashburnham, Westminster, Gardiner, Winchendon, Templeton, Athol, South Royalston, and East Princeton — towns so situated relatively to the railroad and to Fitchburg, that they are nearer by the railroad, and can be so connected more accessibly, to Fitchburg than to Worcester to-day. Every one of them to-day seeks Boston through Fitchburg and not through Worcester; although Worcester, when you have arrived at it, is all of ten miles nearer to Boston than to Fitchburg; showing that nature, and labor, and causes of growth, all tend to a connection of the locality with Fitchburg itself.

I have done, or nearly done, with the first condition; which I have to submit to the judgment of the committee is perfectly satisfied. Here is a large enough area; a large enough mass of farmers and manufactures, and an aggregate of wealth; means of growth, and competition of labor large enough to ensure you a county of at least the average of counties — worthy of Worcester; worthy of Middlesex — the fair daughter, I agree, of fairer mothers, yet a daughter whom they will not long disown.

Now it will repay us, as it seems to me, to inquire for a moment, what was the population and valuation of each of the counties of Massachusetts, when they were originally created, compared with this? I pray your attention to that inquiry, as it runs into a very little detail only, for the purpose of enabling you to see how large a population; how large a business, this government, as a historical fact, has heretofore deemed to be

considerable enough to have the "ease" of a county; and thus gather a standard from it, by which one may judge whether or not we present a case worth the consideration of the committee here.

Now when, in 1643, Suffolk, Essex and Middlesex were established, what was our whole population? Very strange indeed it is to say that nobody pretends to know, within eighteen or twenty thousand persons; but the fair result is, that it was somewhere from eight to twelve thousand. So that you find then that the "ease of the people," at the time when there were not 20,000 at the outside — probably not 10,000 — divided this small aggregate into three counties, making a shire town in each.

What was the population of Springfield, Hadley, and Northampton, when old Hampshire was made a county? It was actually beneath 5000; probably not over 3500. The whole population of the commonwealth was not above 35,000. When, in 1685, Plymouth was divided into her three counties, our whole population is not estimated to have exceeded 10,000 persons. I beg to refer you on these topics to the paper of the American Statistical Association, vol. i. page 144. I have looked in vain for the extent of the numbers in Worcester, in 1731, when it became a county — Whitney's History I have not been able to find. I know that, in 1763, it had 30,000, or about 30,500; and, in 1731, I apprehend its numbers were from 10,000 to 15,000; I doubt if they exceeded 15,000. Norfolk, when it was established in 1793 — I refer to the census which the committee will find in the same volume — numbered but about 23,000 to 25,000 persons, with a valuation of \$250,000 or \$275,000. So that, as recently as 1793 — after the principles upon this general subject; the general tests by which the success or failure of counties were to be determined; and the ends they had to accomplish, had come to be thoroughly understood — you find them plucking off Norfolk from Suffolk, with her 23,000 souls, and a valuation of \$275,000, or less. And I submit, that when I present to you a population of 48,000, and a valuation of \$20,000,000, or \$25,000,000, to-day; according to every historical standard that has had the sanction of the Massachusetts past, I show

you an area, and people, and money, and a future, large enough to be allowed to take their "ease" in this kind of inn for the accommodation of a county made expressly for them.

I have now done entirely with the first condition ; and now pass to the second branch of the proposition which I am to establish.

I respectfully submit, next, that this area, and mass, are now to a considerable and real degree incommoded—not "at ease"—in the transaction of those affairs for which alone counties are created ; and that this inconvenience will be to a real and considerable degree—on a balance of good and evil—relieved by their institution into a new county : so that, in so far as they are themselves concerned, the public good, in this behalf, will be advanced. That is my second proposition : and in coming to the discussion of this subject, I am bound to pause for a moment, and submit one very obvious consideration, which seems to have been overlooked by the counsel on the other side ; and that is, that in this area—as in every area that presents itself for erection into a new county—there are, of course, included some localities ; some towns, which are more, with others which are less incommoded ; some which will derive more, are included with others which will derive less advantage from the change. So it is, I suppose, with every case of a new town or county created. Some spots there will be—here there are several—to which it will be a matter of comparative indifference whether they go or stay. Some, as here, will be situated so near the border line, that they are about as far from the old shire town as from the new ; and they will undoubtedly incur some inconveniences, which they do not now experience, and which will fall on them with more severity than on any other portion of the area. How this may be in this case, I need not pause to consider ; because what I desire to say is, that this is no objection at all to including localities within the area of the new county, and no argument against creating the new county itself. The truth of the matter is, if you find so large a mass of interest as to deserve a new county, you will see if you can give it to them ; still, in your attempt to give it to them, you

will, so far as possible, at the same time, avoid creating a small and inconsiderable county; and therefore you may with perfect propriety include some who do not gain much by the change, and some even who would gain nothing, having regard exclusively to its influence upon themselves.

A single illustration is worth a great deal of abstract discussion. Is there any reason to doubt that when Norfolk was broke off from Suffolk it was for the mere interest of Roxbury and Dorchester to stay with us? If the interest of Roxbury or Dorchester could alone have been consulted, would not they rather have stayed than gone? Nobody can doubt it. The truth is, that the grounds of policy which actuated the legislature were these;—that here there was a mass of interest, and there were numbers of inhabitants, which required additional county accommodations; and that therefore they were entitled to have it. Along with that another end was to be attained; and that was the end of establishing a county respectable in numbers and area; and therefore, for that purpose, the legislature ordained that with regard to these one or two towns, to which it was a matter of indifference, or perhaps of inconvenience, they might be placed to either as the public good upon the whole should demand. The other considerations constituting the case, created the necessity for a county; and the propriety of making it a good and large one created the necessity of making these additions; and therefore if, upon the whole, its area as an entirety was benefitted by the change, all the conditions were satisfied.

You will observe that unless I can have the benefit of this consideration, my clients are never to have any relief, with the consent of the county of Worcester. One of the committee inquired of a witness, whether there was any objection, in his neighborhood, to granting us a half shire; and he said "Certainly." We have tried again and again for a half shire, and it has been refused. We have tried for a new shire without success. We cannot get relief in that form. We can get relief in no form, but by the establishment of a new county; and therefore I submit that, as we present you a case for a new one; area enough; and masses of interest enough; you will

desire, that while making it, you make it also respectable, and according to the historical standards and practices of the State. You will therefore make additions to it, on this border and on that; not so much for the benefit of a particular city or a town as for the good of the whole.

How shall we have the relief but by the establishment of a new county? We shall not then have it, however, unless we can have a respectable county. Therefore, I submit that the course which the legislature would take, would be to inquire whether there is, or is not, here a mass of persons, and an aggregate of interests, which are entitled to increased accommodations; and then see what others of them in their neighborhood shall be added to promote the great work, as a whole, to be done.

Taking that general suggestion along with you, I have now to submit that this area, as an area, is not accommodated in regard to the ends for which counties are established. On the contrary, I respectfully maintain on these facts — I am now about to put it in some little detail — that with regard to those ends, it is grieved and disappointed, and that it may with great confidence calculate upon this form of legislative relief.

Now, I think, as a preliminary consideration, that the very fact — it was presented with a great deal of propriety by my brother, Mr. Bailey, and it will very properly bear repeating — that a county of the size of Worcester, in area and numbers, vastly exceeds those of any other county of which anybody, anywhere, has heard or knows anything, affords a sound *prima facie* presumption that it is too large to answer the specific objects of a county. Counties in all the States are created for substantially the same general purposes — that is to say, mainly for the administration of justice; somewhat for the registration of deeds and other secondary objects. Now, by what kind of county these objects can best be accommodated and accomplished, a very wide and various experience must, by this time, have taught the American community; and if you cannot find, under this examination, that there is one county in the United States; certainly not one in New England; not

one in New York ; approaching in any degree to the area and numbers combined of the county of Worcester — I submit to you that it affords some ground of inference, that it is beyond the maximum of convenience as ascertained by experience, in this case. And especially, if you find not one county in all our States, approaching this in its aggregate of numbers and area, with so small a supply of shire towns, you may be sure that here is a failure to hit the true conditions of a practicable and desirable public convenience. Now, the facts in that behalf are very striking, but they are also so familiar that I need not dwell on them. Our new States are settled by those who carry with them the experience of old ones ; and they are to this day notoriously laid out in counties of 600 square miles. This is testimony of great value on the practical question we are here attempting to consider. Worcester has 1675 square miles. These new counties have very sparse populations ; make very few contracts, and very few sales of land by the foot. I apprehend they have comparatively very limited necessities for the administration of justice by courts of law, or for the registration of deeds ; and if you find, in point of fact, that this is the result of the universal experience of the East emigrating to the West — that counties of an area of 600 square miles are found to be practically sufficient, it is testimony, so far as it goes, that the broad area of Worcester is inadequate for the purposes for which counties are established. Then through Massachusetts you find the same thing.

Perhaps you will allow me to remind you, that in New England no other county is in the least degree to be compared with this ; and in 1699, when the numbers were comparatively very limited, the three counties of Massachusetts were all of them furnished with their two or three shire towns ; so that not only is Worcester vastly larger than them all, but even not distinguished by the peculiarity of a half shire.

As early as 1699, an act was passed establishing " Inferior Courts of Common Pleas " in the several counties of this Province, as follows, —

For the County of *Suffolk*, at Boston five terms yearly.

1. For the County of *Essex*, at Salem two terms, at *Newbury* one term, and at *Ipswich* one term.
2. For the County of *Middlesex*, at Cambridge one term, at *Charlestown* three terms, and at *Concord* one term.
 For the County of *Plymouth*, at Plymouth four terms.
 For the County of *Barnstable*, at Barnstable four terms.
 For the County of *Bristol*, at Bristol four terms.
 For the County of *York*, at Wells two terms, at York two terms.
3. For the County of *Hampshire*, at *Springfield* two terms, at *Northampton* two terms.
 For the County of *Dukes*, at Edgar-Town two terms.
 For the Island of *Nantucket*, at said Island two terms.

Vide Massachusetts Province Laws, from 1692 to 1787 (7-56.)

I therefore beg you to take it with you as a preliminary, and, to my mind, extremely pregnant fact, that the example of a county with an area of 1600 square miles, is entirely without a parallel in the reading of any member of this legislature; but, on the contrary, the universal practical fact in that behalf is — testimony, in advance at least of the strongest description — that it is a maximum greatly too large for the ends for which it was created.

I now come to speak of an evil of great magnitude which exists under our present condition, and from which we seek relief; which is this — that the people are placed at so great a distance from the seat where their justice is judicially administered, that they are seriously incommoded in that regard, and would be permanently and essentially relieved by the establishment of a new county, or of a new shire town. The facts in regard to this part of the deliberation are perfectly clear. They were placed last year by your predecessors, the committee, in exactly these terms — (I pray to refer you to the fifth page of the Report of the committee of last year):—

“The distance from Fitchburg to Worcester is twenty-five miles. The average distance of the eighteen Worcester County towns from Fitchburg is less than fourteen miles; while the average distance of the same towns from Worcester

is over twenty-four miles — making a difference in the taxable costs of witnesses, jurors and parties, of eleven miles more than would be taxable were courts held at Fitchburg.

“The average distance of the five Middlesex towns from Fitchburg, by the common roads, is about eleven miles ; while to the nearest court in Middlesex, which is held at Concord, the average distance is over twenty-two miles.”

So that the statement of the committee is, that every one of the towns, upon an average, within the petitioning area, is now eleven miles — and, taking the entire journey, twenty-two miles — further from the place of the administration of justice, than under the institution of the new county it will be. Now this is all exactly right, and is entirely adequate, if it be taken under its necessary explanations. The committee in that case were proceeding in reference to the existing old roads, and travel by vehicles other than the railway. To the railway system that is inapplicable and inadequate ; and inasmuch as the actual travel to-day is and will be more and more where the railway is established ; inasmuch as the actual burden practically therefore upon the administration of justice, must be measured by resort to the railway system of accommodation, permit me to turn for a moment to this ; and without troubling you with a great deal of detail, to present, in the first place, with regard to the county of Worcester, this striking fact — that eleven towns out of the eighteen who are petitioners before you, travel — every juror, and every witness, and every party of them — on an average, twenty-six miles ; that is to say, for the entire journey, fifty-two miles to Worcester, for justice, further than they will travel in the new county, if we succeed in establishing it. I repeat, sir — for that fact cannot be too often repeated — that eleven out of the eighteen towns now go two and fifty miles to Worcester and back again, for the attainment of justice ; — every mile of which, to every juror, witness, and party, would be spared by the establishment of the new county. I am prepared to verify that by a little more particular reference to details, but perhaps it will be scarcely necessary to do so. With the remaining seven towns of the eighteen, the differ-

ence is considerably less ; you may say, if you please, that the difference is nothing ; and by and by, when I come with great respect to submit to you the average which attaches upon the whole case, you will find that I properly allow for the difference between them and the eleven. Let it be that to seven out of the eighteen the difference is nothing ; — to eleven it is the extraordinary amount to which I have now had the honor to call your attention. Mr. Chairman and Gentlemen, lest the mere details may have escaped your recollection, permit me to verify them by the briefest possible reference to the facts. Seven towns then, out of the eighteen, — Fitchburg, Royalston, Athol, Winchendon, Templeton, Gardiner, Ashburnham, every one of them, — every party, every witness, every juror, in point of fact, reaches Worcester and returns through Fitchburg now ; and in regard to four more of them — Phillipston, Hubbardston, Westminster, and Lunenburg, by far the greater part of the actual travel this day passes by railroad to Worcester, also through Fitchburg, from Worcester through Fitchburg back again ; — and I submit it to you upon the evidence, that beyond a particle of controversy, every and all the travel from those four towns also, would far more conveniently reach that destination by passing through Fitchburg itself. I repeat it, — and I have called attention to these details, because, although not interesting in themselves, they are of vast importance in appreciating the proposition to which I invite your attention, — I submit it to you, that it is perfectly clear that, as the organization of the county this day rests, every man, juror, witness, and party, who is called by the law or by his own interests from his home to Worcester, travels to and fro for justice, that should be free and easy and accessible to every man, two and and fifty miles, which could be spared by the organization of the county for which we pray.

How does it stand in this behalf in Middlesex ? The detail is embarrassing, and, therefore, I will state it in fewer terms. Every one of the five towns embraced within this area, in order to reach any shire town on the surface of the earth, must first go by railway to Groton Junction ; and having arrived at Groton, it is fifteen miles to Fitchburg, fifteen to Lowell, sev-

enteen to Concord, thirty-five to Cambridge,—so that upon the whole matter—upon an average which I have computed with a great degree of care, taking into account the fact that the Cambridge and Concord terms together make up much more than one-half of the entire litigated cases in the county. I submit there is no doubt that the result is exactly this:—that for every town; every man; every juror; every party; every witness; within the petitioning area, that has occasion to seek justice through the administration of justice judicially in court,—I pray that the memory of the committee may retain the detail,—travels, reckoning his journey both ways, eight-and-twenty miles; every farthing of which we save him by the establishment of the new county. Fourteen miles out and fourteen miles home, on the average, for every man, is the burthen we suffer and the relief we seek;—fourteen each way—not eleven as your predecessors, the committee of last year, stated, and thought it an entirely adequate basis for the relief they proposed to the legislature;—but fourteen miles each way is the tax; and from that tax we ask relief.

Well, now, Mr. Chairman and Gentlemen, so far every one of you will have felt that this is an entirely easy inquiry, that this is the result of the evidence and of the figures. The difficulty is to appreciate how great a burthen is this upon the administration of justice; and how great will be the relief from that burthen, for which we may have reason for many generations to thank the kindness and forecast of yourselves and the legislature. How great is that burthen of fourteen miles each way, twenty-eight in the whole;—regarding it as a burthen on the administration of justice; and how great is that relief?

Now, I could not but admire the discretion of my friends on the other side, and the discretion of some of the more intelligent of the witnesses. Every one of them was manly enough, of course, and adroit enough, to begin by admitting that the distance constituted a considerable objection; that there was a considerable saving of distance, it must be confessed; and having relieved themselves by that bald and vague confession, not another word were we able to get out of them, from beginning to

end, in regard to this whole matter. One of the learned counsel, not immediately before you — except in the pamphlets circulated by the industry of the committee of which Col. Lee has so long been the Chairman — was not quite so discreet. He went a good deal further, and had, I will not say the affrontery — to borrow the unguarded language of my friends on the other side — but the exceeding indiscretion, to put forth in a printed speech to the county of Worcester, that they regarded this burthen on the administration of justice as a benefit in itself, and relief from this burthen as an encouragement to litigation, which they believed the legislature of Massachusetts would not be inclined to favor. Sir, I have to try to make some effort to cause you and the gentlemen to appreciate, as I appreciate, how much eight and twenty miles of needless travel, for eight-and-forty thousand of this community representing and doing business upon \$25,000,000 of valuation; I am to try to assist you in appreciating how great a burthen is that upon the administration of their local justice. Three or four pretty general considerations will express all that I can say in regard to the matter, in itself, at first view, apparently simple; but in respect of which the real difficulty is, that we do not give our minds sufficiently to it adequately to impress it upon ourselves; and in trying to appreciate it, in the first place I beg your attention to this clause, “equality is equity,” all the world over; “*equality is equity.*” I beg leave to submit to you that there is not to-day, and there never was — since the pilgrims landed at Plymouth, and Endicott and Winthrop at Salem and Charlestown — a population of eight-and-forty thousand persons in Massachusetts, that were compelled to make a journey of eight-and-twenty miles for the attainment of justice; if the establishment of a new county, or shire town, could relieve them from it. I repeat — because such details fail if we do not view them in all their aspects — there never was a case of so many as eight-and-forty thousand persons — nay! nor half so many — in Massachusetts since she existed, who were obliged, and allowed, and compelled by the legislature to travel eight-and-twenty miles for justice, when the establishment of a new

county, or new shire town, would give it to them at their own doors. Not only intrinsically is it an enormity, but there is a discrimination and peculiarity of injustice in it, which I know you will agree with me I do not here overrate.

Without consuming time to imagine cases which may be supposed to exist, how was it out in the county of Norfolk? That was established in 1739, and what was the state of things there? I have caused that investigation to be conducted to this result; — every town in Norfolk, on an average, was but fifteen miles and a fraction from Boston; and every town in this county to-day, on an average, is ten miles and a fraction from Dedham. So that for a mere saving of five miles out, and five miles in, the legislature thought it within the spirit and meaning of the Constitution to create a new county for the “ease of the people” in the administration of justice; five miles out and five miles in — not fourteen out, and fourteen in, as with us — five miles out and five in, with a population of twenty thousand; not fourteen out and fourteen in, with a population of eight and forty thousand: five miles out and in, with a valuation of \$400,000; while with us it is twenty-eight miles to travel, with a valuation and industry of \$25,000,000. While the dispute continues, exaggeration ends. I pray your judgment that there has been no case in Massachusetts, nor anything in the least degree resembling it, in which a population of 48,000 have been compelled to pursue a journey so long and burthensome as this, to the court-house and back, when the establishment of a new shire town, or a new county, would have afforded them absolute and entire relief. That is no reason in itself why we should have this relief; and yet it is something. Does not the Constitution say that every man shall pay his share for the administration of justice? Is not “equality equity,” all the world over? Is there any reason why these men, living above 36.30 in this Nebraska territory of North Worcester and Middlesex, should not have justice as cheap as their neighbors below the charmed line everywhere in Massachusetts? That is the first consideration.

And, by the way, I ought in another part of my argument to have added one striking fact, illustrating what numbers

and valuation, in the judgment of our legislature, have always entitled, in Massachusetts, the community to the "ease" of a new county. I have referred again and again to the County of Hampshire. What do you think was the population of Hampshire, and Hampden and Franklin, and their valuation, when made into three counties, in 1811 and 1812? Hampshire had 24,500 inhabitants, and a valuation of \$213,000; Hampden had 24,400, with a valuation of \$211,000; Franklin had 27,200, and a valuation of \$210,000. And for the accommodation of every four-and-twenty thousands of persons, and for every \$200,000 of property and a fraction, they gave them the relief of a county. Here are before you 48,000 persons, and a valuation of \$25,000,000.

Mr. Chairman and Gentlemen, in order to enable you to see how much of a burthen this amount of travel is; and how extreme a relief we should feel the saving to be; I am to remind you, in the next place, that this is a burthen — not upon the going to market; not upon going to mill; not upon going to the Museum; but a burthen on the pursuit of justice judicially administered; and that the Constitution and the legislature estimate the easy; certain; prompt, and inexpensive administration of justice as one of the very highest concerns of the State. I submit, that in your eye and that of the Constitution, such a burthen as this is no light burthen; such a relief is no light relief. I submit that he who comes here to tell us that he does not wish litigation to increase, and thinks it will be more patriotic, pathetic, and pastoral, for mankind to give up their demands, or settle disputes by referees paid for by themselves; has forgotten the Constitution; and expects the legislature will forget it also. I have not so read it, sir; and I apprehend you have not so read it; and therefore I am going to call your attention to the great fact that these twenty-eight miles — which would be nothing if they kept us from a place of amusement; which would be useful if they kept us from a place of guilt — are a great burthen when they come to keep us from the administration of justice: and I submit to you on the contrary — so far from sustaining any of the views, to which Col. Lee and his committee have given currency in the

pamphlet to which I have made reference — that I should be affronting the committee, if I consumed a moment of your time in such a platitude as to discuss that the protection of individual rights is the great end of the State; that the chief agency by which individual rights are to be attained is the judicial administration of justice in court by the jury and the judge; and therefore that its grandest and most beneficial concern and achievement is to bring the attainment of justice, by the administration of justice judicially — I will not say in quite the proud and literal boast of the legendary Alfred — to every man's door; but I will say as near to every man's door as it may be; and any how as near to one man's door — other things being equal — as to another's. I respectfully propound to you that that is the chief end for which the State exists; and therefore when my learned friends stand up here with their hands upon their hearts and concede that the distance is an evil, they concede nothing to the purpose; or the whole matter is inadequately appreciated and inadequately exposed; for, as I have already said, it is the result of these statistics, upon the average of all the evidence in this case, that every juror and party and witness in the petitioning area, travels fourteen miles further to court and home — eight-and-twenty miles on the journey, — for justice, than in the organization of the new county he would be required to travel. And I repeat that that burthen on the administration of justice is itself a severity; and that relief a relief, for which, under God, we should thank you as long as we remembered the legislature to which we were indebted for it.

I shall turn to the Constitution, to see what is its estimate of the administration of justice. I shall not take it on anybody's concession. It is true that long before this Constitution was written, the same doctrine which it expresses was universally entertained by every great thinker of every civilization. Such was the universal doctrine of society. My learned brother quoted Virgil upon me with a great deal of beauty, and eloquence, and pathos. Let me give him the wisdom of Cicero. That great writer tasks himself to say that the state is nothing but "*societas juris*" — "a partnership of justice;" "a partnership for justice." Do you not remember his excla-

mation,—“What else were states established for, but that every man might have his own under the law!” Who will ever forget that beautiful, and precise, and comprehensive phrase of the French civilian and philosopher, “Constituted and established justice—that is the state.” The state is nothing; but “constituted and established justice.” And that justice, in all codes, is the practical securing to every man his own. But I would rather turn to our own Constitution for our constitutional estimate on the value of this. And permit me, Gentlemen—lest you think I am wandering into platitudes and discussions disrespectful to yourselves, and unworthy of this presence—to remind you that what I am calling your attention to, is this important fact; that this is a burthen on the search for justice, and that justice is everything. What is the constitutional estimate of the value of justice, at last? Our learned brother, Mr. Mason, thinks that arbitration is better than the administration of justice. I am differing from him, and I turn to the Constitution for my authority. I do not find anything here about manufactures; or about commerce; or about our favorite fish. But what do we find? How solicitously; how many times over and over and over, the value of justice judicially administered is expressed!

“The end of the institution, maintenance and administration of government, is to secure the existence of the body politic; to protect it; and to furnish the individuals who compose it, with the power of enjoying in safety and tranquillity, their natural rights and the blessings of life.”

What are their “natural rights?”

“All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.”

Such is the end of society, and such are the rights of the citizen. There is on the part of the government a certain duty to award justice, and a certain right in the citizen, to find it pouring down, as the water in the streets before his

door. Hear what is said in the tenth section of the Constitution :

" Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection."

His share ! Equality, we said, is equity. *His share!* not more than his neighbor in the town adjoining him ; not more than an inhabitant of the happy central city of Worcester ; not more than another ; but his equal share, as far as the law, acting by *general* rules of course, may secure equality to every man. But it goes beyond that ; and it is very striking and beautiful to see how a Constitution, that lifts itself above material interests, so far as any enumeration of them is concerned returns, and again and again outvies the classic publicist in the statement of this great right, in its particular and detail.

" Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it ; completely and without any denial, promptly and without delay ; conformably to the laws."

But does the Constitution content itself with that general statement of the rights of the citizen, and the duty of the government ? No, sir. What are the provisional means for securing the rights of the citizen ? Is it, as I said just now, that the party litigating shall pay for his own defence ; the mode, which—according to the testimony of Mr. Wood—is this day, to a very important extent, the recognized method of keeping whatever of justice the north part of the counties of Worcester and Middlesex this day practically obtain ? No, sir. Look at the 29th article of the Constitution :

" It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by

judges as free, impartial and independent, as the lot of humanity will admit."

Is that quite all? Not so!

"In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherwise used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it."

Now then, I hope nobody will do me the injustice to suppose that this is irrelevant and inconsequential declamation, upon a topic of this general character. I have read these passages to this end; to deduce this conclusion: that if I find the Constitution with so much solicitude enacting, in the first place, that the great end of the state is the administration of justice and the security of rights; and, in the next place, that its great instrumental means is the judicial administration of justice in court; and, in the third place, that its great instrumental means, under the laws, is the establishment of courts presided over by learned judges, and wherein the trial by jury is sacred, — if these are its purposes, let me remind you that the burthen upon the suitor, whose rights are thus solicitously re-enacted, and written in letters of gold; a burthen in his journey to that court-house; to that bench of learning; to that sacredness of jury-trial; is a burthen upon the highest and dearest practical rights of the citizen. And, therefore, I respectfully put it to you, no man shall come here to evade the force of these facts, simply by telling you this distance is, to be sure, considerable, and that is all there is to be said about it; and that disputes can be settled by arbitration. I submit, sir, you will say, that is not the constitutional mode of securing your right; but, on the contrary, you will say to me, I apprehend, that it is not enough, under the Constitution, to make learned judges, to open court-houses, and convolve the jury, and guarantee the sacredness of the right, if you leave a local population of eight-and-forty thousand persons, and a valuation of twenty-five millions, so far away that they cannot

easily and conveniently have access to the fountain thus laid wide open to every man, for his free and easy resort. I say that is the next thought, that we appreciate the burthen laid upon the people in this part of the country.

But, in the third place, how much litigation do we have within our part of the county? That is a pretty important third inquiry too. How much do we have up there? Sir, if it turns out, after all, that we are a colony of Mormons, with one hundred and fifty or five hundred wives apiece, and no business to do; if we are Swiss mountaineers, amusing ourselves with the "pastoral oaten reed," with no justice to seek; if this was the golden age — that is one thing! What are we? Who are we? I will tell you what we are; and I appeal to the learning of the bar of Worcester, which knows so much better than I can know what are the characteristics of the people. Sir, we are a community of about one-third of that entire county, and it is our fortune, or misfortune, that we have about one-third — our full share — of all the litigation with which that great county of Worcester is this day afflicted, if affliction in any sense of the language it is so to be called. We have our full and fair share, according to our numbers, and to our money, of the entire litigation.

Now see what that comes to. See what Worcester is. What is the whole litigation of Worcester? I do not think Worcester county remarkable for the amount of its litigation — I enter into no comparison of that county with others — but I do not think it remarkable for its litigious habits. I never had the honor to practise much at that bar, but that is my own judgment. I will not instance other counties, which might be more generally characterized as litigious. You cannot bring 120,000 men, women, and children; and a valuation of so many millions, or hundreds of millions, together under the condition of life as it is, so that there will not be much litigation; and therefore I may mention two or three great facts, which show that there is a vast aggregate and a great search for justice there, and unless we would retire from life, we must take our part in it. Permit me to give an answer to all this sentimentalism; and to say that, under such a system as that, it is the hardest man and the boldest nerve that wins the day. The timorous and the poor retire ever from the contest, and it is only when the administration of justice itself is perfect, and accessible, and open to every man, that the

humble; the woman; the widow; the orphan child; the valetudinarian; the old man; meets on equality, and on right terms, with his stronger minded antagonist; and therefore this sentimentalism — I repeat it — ends in nothing but the triumph of the strong and the triumph of the rich.

Now, then, Worcester developes a vast body of litigation — not because its people are litigious, and not because its admirable bar is litigious, — but, because, as an exponent of civilization, a certain amount of judicial search for justice is always to be found. There are two or three striking facts to which I would allude, but time will not permit me to say more than a word upon them. Consider first, however, that the doors of the Worcester court-house stand open, almost like, or unlike, the temple of Janus, day in and day out, through the year. We have it in evidence that there have been 215 days of the sittings of the court, exclusive of Probate Courts, in a single year; that there is a steady and rapid increase of its terms from year to year — which tells the whole story. Last year, or the year before, these courts sat 215 days. Add 36 days for the Courts of Probate, and you have 251; and if you will put to that days on which the county commissioners make their views of roads, and the days on which the Courts of Probate hold their itinerant terms, I suppose there would not be a great deal less than 260 days in the year, on which somebody from the remotest part of Worcester county is liable to be called on to attend — or else to suffer by the delay of non-attendance — the investigation of his rights in a court of law. Some of the details, perhaps, I ought to present, because they throw great light on this important question. I want to show you that there is a steady increase of litigation in Worcester county. Not that the people are growing worse there; but as wealth increases, and numbers increase, litigation — civil and criminal — goes on increasing also. Remember then, that in 1852, the pay for jurors alone in the Court of Common Pleas, in one single term, was \$4,441.90; and that for the same term in 1830 — twenty-two years before — it was but \$862.74; and if you allow, as you ought, for the increase of the pay of jurors between these two periods, and call the amount \$1000, there will still have been an increase four or five fold in twenty-two years.

Such is the rate in which it is to go on; and as to this prattle about the diminution of the number of cases on the docket, every

lawyer perfectly well understands it. Undoubtedly many causes have contributed to diminish the number of suits, in cases not litigated; but if you would know which way the great tendency is directing itself in Worcester in this behalf, take two facts: — first that the length of our terms is and has been, for the last ten years, steadily increasing. Look, in the next place, at the field, and middle ice and iceberg of our vast litigated docket as it stands to-day. In December, 1852, at the beginning of the term, there were 606 cases on the docket, and these were litigated controversies; and many a man's heart was breaking, fainting with the delay of justice: the delay of justice, that "hope deferred," that waits — according to the sentiment of the greatest poet — upon the "law's delay:" 606 cases on the docket in December, 1852! They went through with a term of 100 days and dispatched 200 of them; and left behind that "too, too, solid flesh to thaw," a remainder of some 400 litigated cases at last. Take one other single fact: — that is, the criminal docket of the county; and you will see a little which way we are going, and what is the occasion for legislative interposition. In 1843 the pay of witnesses and jurors in this court was \$4602.40: only ten years afterwards they ran through a term of sixty-eight days, and it was \$9128.37. Add the general bills in criminal cases in 1843 — it was \$1996. In 1853 it was \$8160; so that, totalizing it — if I may make a word in my hurry — the amount is \$6598 in 1843; and in 1853 \$17,288. As wealth increases, contracts multiply; frauds multiply; crimes — even under this administration — multiply; and I dare say they are ferreted out, and successfully punished. There it is. Now without pursuing this topic any further, how much of all that litigation falls to our lot? How much of this bitter fruit grows on our trees? That is the question. I am provided with a pretty formidable array of statistics which I will spare the committee. But I put it to you as a general fact, that we shall have this litigation in full proportion to our numbers and wealth — if not in a larger proportion — and in some proportion to our occupations; for as I have had occasion to say before, it is not the farmer whose lot is cursed by litigation, but it is the operative; it is the middling capitalist; the middling man; not the richest; not the farmer, who is beyond it or beneath its reach; not the great capitalist who is above it, but exactly the men who are taking up the water power, exemplifying the arts, developing the capacities, and giving to the world

the production of this valley of the Miller's river; of the Nashau; and of the richer valley of the three great railroads. It is on these, and such as these, that this great burthen of litigation is to fall. I am prepared with statistics to show, that it is a natural and ordinary inference — in a county like this; a county whose general litigation amounts to such a formidable aggregate; with so large a capital, in a business which makes contracts; whose daily bread is contracts; that lives by the keeping of contracts, or does not live at all — that it is we, and such as we — and I submit you will believe it — on whom this burthen will fall at last; or fall at least in just proportion with our neighbors. I may leave that to the general inference of the committee.

I hasten, therefore, to exhibit under one other view the magnitude of this burthen, and this evil. You remember I am upon the magnitude of the burthen which this eight-and-twenty miles of travel amounts to; and I want to get at it in dollars and cents. I want to show you how much more we have to pay by the year for the administration of our justice than our happier neighbors below us have to pay for theirs. What is the amount of the extra, and useless, cost of moving backwards and forwards — for witnesses, parties, jurors, and all the instrumentalities by which this litigation is conducted so far from home? Now I propose to submit a view or two of this matter to the judgment of the committee. Sir, I compute it costs us — the mere needless travel which the new county will save us — from five to eight or ten thousand dollars by the year. Hear me for my cause. Let no man, till he has appreciated the details, hastily reject the estimate. I say, by leaving us where we are to-day; you lay a discriminating tax upon the search for justice of five, seven, or ten thousand dollars. Glance at a few of the reasonings upon the evidences by which I support it. In the first place we have called certain professional witnesses — Messrs. Wood, Merriam, Mansur, Ware and others — the fittest by possibility to judge of the practical bigness of this burthen. I want to get it into money, if we can ~~can~~; because as long as you can talk it off in this way and that, it amounts to nothing.

What witness is to be compared to our brother Wood? He did not testify under oath; but, in addition to having practised twenty or thirty years at the bar, he has represented, so many times over, the town where he lives, in the legislature and the convention, that I

think we may trust his statements. Mr. Wood's representations have been confirmed on this point by every one of the witnesses; and after having stated in a general way that it is a grievous burthen, he tells you, in terms, that he estimated it at thousands of dollars. That may seem vague, and it is easy to raise a laugh at such an estimate. I should be very glad to know who will answer that estimate; whether or not upon his proofs it is not satisfactorily established to the judgment of the committee. Mr. Wood went on in so many terms to declare it to be a great grievance, and states upon his honor as a member of the legislature, that it practically operates to coerce settlements — in which the strong and the litigious always win over the weak — and to drive men to arbitration — not in one instance, but practically and largely; so that the trial by jury ceases to be sacred, and ceases to be gratuitous. This general statement of Mr. Wood is sustained by the other witnesses; and I hope it has not escaped the recollection of the committee, that Mr. B. O. Tyler — a witness called on the other side; apparently a respectable member of the bar; every word of whose testimony is established, and who comes to resist this application — on his cross-examination stated “the burthen from distance is great; the obstruction to the pursuit of justice is severe; the relief is an object of large importance;” — every word of it is the word of the witness. There is not one particle of testimony to the contrary. Col. Lee did not deny upon the stand that this is an evil of very great magnitude. No witness has been produced — though] the greater number of witnesses follow agricultural pursuits; and therefore are very little afflicted with litigation in any of its forms; and are therefore incompetent to sympathize with professional and operative witnesses, on whom the burthen more particularly falls — not one man comes to differ from the statement of Mr. Wood or Mr. Tyler in this behalf. So, then, with the Constitution open before us — leaving justice free, complete, and undelayed — the testimony of the only competent witnesses to whom I can practically resort, goes to tell you it is an expensive burthen, practically; so much so that the learning of the judge, and the sacred impartiality of the juror — called in rotation from his fellows to pass on a single fact, and then go on his way — are practically denied to us. I am going to carry that a single step further. I wish to ask your attention to a page in the report of the committee, of last year — which I will not stop to read, but will

trust to my general recollection of the matter — in which the amount of the extra expenses in two or three particular cases is recorded and recollected for the instruction of men. The extra expense for a single criminal trial, of witnesses alone, was very nearly \$160 — for a party presumed to be innocent — guilty for aught I care; it is nothing to the purpose; he had a right to defend his innocence without being ruined by the expense of it. At another Supreme Term of Worcester, at which only three cases were tried — and those three cases from the petitioning area — there were 130 or 140 dollars of extra expense for witnesses alone. Guided by these general facts, I had proceeded to distribute over the various terms the sums which were applicable to them; and the proportion by which I make up my amount of five or ten thousand dollars. I should like, at least, to give so much evidence as this — in order to show that I have availed myself of the kindness of the committee, not to neglect the study of the case — and I am going to make you out seven or ten thousand dollars, “about as soon” — to use Mr. Sheridan’s illustration in the House of Commons — “as a man would say Jack Robinson;” — suppose you glance at these items: — Add six or eight dollars’ extra cost of travel for every suit not litigated; and call that a thousand dollars — there is an extra expense, *dead* on the parties; good for nothing to anybody; in every case entered and followed up for litigation, travel and attendance \$2000, for witnesses and parties: for costs in criminal courts I conceive \$1500 — including committals — to be a fair expression: in the Supreme Court \$500 to \$1000: for extra probate business — travel of parties \$1000; county commissioners, and search after deeds and records, together, one or two thousand dollars; and you have the total amount of \$7000 to \$10,000.

I have made that out in consultation with some of the most prudent and best instructed of my clients, and it would swell rather than fall beneath this amount. These extras present themselves, like so many serpents; put out their forked tongues, and hiss on us from every retreat; and follow our footsteps wherever we go. Just bear in mind — what I did not know till yesterday — that any service of a writ in the county of Worcester, clear to its northern line charges all the way to Worcester and back again; for a benefit to no human being; compensation for no conceivable service. Now I have tried to put this into dollars and cents. Very likely indeed the attempt to

do so has only weakened it. If it be so, I can only regret it. I hold it to be five, seven, or ten thousand dollars. You could relieve us from it. You hurt no human being by granting the new county; you leave Worcester with her robes about her; and Middlesex, as she is to-day; you touch the hair on no man's head; the feather in no plume. You relieve us, and for God's sake, why should not we have it? If you should pass a stamp tax, levying \$10,000 on our litigation, and I think it would go rather hard to make a revolution in the politics of our State. Under any name, in a system of equal rights, it is intolerable. Yet that is our case exactly, in the operation of this system. If I were asking for money — for scrip; if my enemy was anything, or anybody, but a sentiment, an emotion, a prejudice; if it were a conflict of rights only; if it was only the smaller interest against the larger — it would be something. But I am here for the plainest possible right; for the merest and simplest justice; and my antagonist is an emotion, a memory, a hope, a nothing; as Edmund Burke said — one of the things which my brother Dana did not quote — “neither abstract right nor profitable enjoyment.” All that is our position.

Now, in addition to this, I have one other thought to add. I have dwelt thus far on mere distance, supposing there is no interruption. I may be permitted to say, that when you get into the Worcester December and January terms, the snows fall and the snows thaw. It is not every day that your railroad communications are preserved; and it is not very unfrequent that your parties arrive at Fitchburg and are brought up for the night — I would not dwell on this, because, after all, we should not get a new county for that; but those interruptions frequently happen; and though they may not result in the parties being non-suited or defaulted — through the courtesy of the bar at Worcester; yet they put him to a continuance that would break his heart. I have known more than one client driven out of court by a continuance, the result of causes beyond his control. I want you to add to that one thing. When you consider how sentimental and beautiful it is to belong to a great county, consider the crowded state of the Worcester docket: estimate that along with this difficulty of delay; and consider that we have to go two-and-fifty miles, to wait, with the countryman in Horace —

“*Rusticus expectat dum defuait amnis: at ille
Labitur et labetur in omne volubilis ævum,*” —

till all the water in the river is run off: whereas it flows, and will continue to flow rolling on for ever and ever.

When you hear there is a term of 80 or 100 days, and 600 cases on the docket; and that 100 days' work melts but 200 of them; waiting — I will not say like Sir John Franklin, for I presume he is no longer living; but like those beneficent persons who have gone in search of him — for the field icebergs to melt — when you have appreciated that, you see what kind of relief it is we seek. Reasons have been given by my friends why there need not be any trouble at all in waiting for a docket of 600 cases. I answer all that back again by the testimony of the local bar. I asked Mr. Wood whether he found it embarrassing to stand there waiting on this little list, under the circumstances, his clients six or eight and twenty, or thirty or forty miles off? He says the evil is great; practical; constant; manifesting itself by driving everybody to the reference of his cause. In that respect, I cannot understand the condition of this bar. I know nothing in the least degree resembling it. They talk about the number of our cases on the Suffolk docket. There is not a member of the Suffolk bar who can comprehend this difficulty. Why, sir, it is mere pastime for the party to attend the court in Suffolk, compared with Worcester. Take the matter of distance — it is nothing; everybody is at home. Suppose a case is on trial. The party goes to court at nine o'clock; goes out to pay his notes at half past one; gets his dinner; comes in again; is discharged at four; and goes home to sleep at night; and it is pastime compared with the condition of the party who comes from the frontier of this area to stay from Monday till Saturday night. The farmer can't go home to superintend his household; to look after his stock; to see how the boys are getting on at school. There they go twenty-six miles, all the way down to Worcester, to try their causes in the presence of, undoubtedly a hospitable and courteous, but an alien forum, and an alien audience. Here we are at home.

Look at two things then: contrast our condition with the condition of our friends in the northern part of Worcester county. One thing is, that three-quarters of our causes here in Suffolk are contract, and insurance cases, tried on the depositions of witnesses, who are not required to attend court in person at all. But how inconsiderable a portion of their cases are of such a character.

There is another thing. If a party has a case coming on here, it does not take him half an hour to go into the office of every lawyer in Court Street to find out the condition of the bar list. He can know just when his case is coming on and be prepared for it. But in Worcester the case is entirely different. The party may have to wait a week before his case comes up for trial; and when it does, and his counsel gets into court, his professional friend on the other side may be forty miles off, in the opposite part of the county.

They compare Middlesex with the county of Worcester, that great litigated region. Middlesex, indeed! Middlesex is practically three counties, upon the testimony of my brother Nelson. Under an arrangement of the court and the bar, terms are held at Cambridge, Concord and Lowell, where causes are tried at their proper time; the result of which arrangement is, that Middlesex is divided into three counties. But in our case there is no such relief—upon the testimony which has been offered in this case—in the manner in which litigation is conducted. As far back as 1699 there has never been a county presenting anything like the amount of business, and area, and population of the county here petitioning,—if it become such—to whom a prayer like this has not been granted. I had some more details to offer, but my own strength, and the exceeding kindness of the committee, admonish me to hasten forward.

I have done, therefore with the subject on which a lawyer naturally dwells longest—the administration of justice in courts of law. There is nothing solemn, nothing plausible, in the world, if it is not the administration of justice. There is nothing worthy of the legislature to do, if it is not the administration of justice—of justice as judicially administered in court. All else is nothing. I put you the case, therefore, in leaving it—so far as that is concerned—that here is area possessing every interest, which yet fails in its great end of giving us our justice freely, completely, inexpensively, and without delay. I leave that to call your attention to two other particulars, and then I shall have established the second proposition. I think there is a failure in regard to the registration of deeds. It might have been undoubtedly committed to single towns; or there might have been one registration for the whole Commonwealth; but it seemed important to those who laid the foundations of our judicial system, that it should be a matter of county accommodation. The theory of the registration of deeds goes upon the ground, that it should be accessible to all; that everybody

who has occasion to buy and sell ; to claim or defend a title ; may go and make search, or deliver his deed for record, and have it promptly returned to him without inconvenience and without delay ; and I think there is in this respect a failure in the county of Worcester. All that courtesy can do is done, but the difficulty is this ; there are 10,000 deeds and more to be recorded there annually. We have, from some parts of the county, to go a very great way to the place of recording these deeds. We are in the habit of buying and selling our lands very frequently in this part of the county of Worcester. That which is demanded, therefore, is that the deed shall be left, and recorded, and restored promptly ; so that no opportunities of sale may be lost. It is the testimony of Messrs. Wood, Crocker, Merriam and Mansur, that in this respect great inconvenience is experienced. Mr. Rogers does everything that he courteously can do ; and the result is that he obliges one man, and displeases twenty—as the French king said, “ He makes a hundred enemies and one ungrateful.” The area is a great deal too large ; the deeds greatly too numerous ; and it would be vastly better for the convenience of the proprietor of an estate if this area was contracted.

There is one other inconvenience to which I will make a single reference, and then pass on. I think there is one infelicity to which—in the extent and by the peculiarities of this county in regard to the objects which counties are expected to accomplish—this particular locality is certainly exposed ; and which a new county would relieve us against. I do not intend to press it in the slightest degree beyond the proofs in this case ; but I put this to you as one illustration of many of the tendency towards centralism ; on which, by-and-by, I shall be obliged, perhaps, to say a word or two. The whole system of highway accommodation is lodged with the county commissioners ;—the county commissioners may be created by the central power—I take it they are created by the central power—and if there is any disposition—I do not now say ; I do not mean to say at any time, that there is—but if there is any disposition whatever on the part of Worcester or anybody else, to keep this county together at any rate ; if there is a disposition anywhere to divert travel this way rather than that way ; then what I say is, that the power exists ; and, therefore, I say that such a locality as Fitchburg and its vicinity—the very instant that the governing and central power come to regard it, if they ever do, as presenting a

local, and revolutionary, and aspiring, and antagonistic interest to Worcester itself—it is in the power of the central board to make discriminations against them in this behalf. How far that is a remark fit and proper for me to make, or the committee to notice, I do not know; but you remember that my brother Aldrich—in alluding to the disadvantages we should expose ourselves to—said we should have a great many new roads to make; for, he said, the entire system of existing accommodation was laid out, not to Fitchburg, but to Worcester; and, therefore, you will have so many new roads to make, that it will be a great addition to your county expenses. I do not know that that is quite so—I am rather inclined to think not—but if it be so, what, after all, is the great central policy that has been employed, perhaps, ever since 1819—at least under the admonitions of the oration to which I have before had the honor to call your attention—in establishing a system of highway accommodation, that should bear the wheat and the cream of Worcester from us towards them? He does not, I think, tell us this; but I am inclined to rescue the county of Worcester out of the hands of my learned brother; and I reply *ad hominem* to his argument; and allow me to remind you of this extraordinary fact; that it is in evidence in this case, that every town but three of the entire petitioning eighteen towns, to-day actually—notwithstanding the impediments of the existing highway system of Worcester—goes to Boston through Fitchburg, and not through Worcester; although Fitchburg is not as near Boston by six or eight miles as Worcester. So that it is either, that my learned friend is mistaken in supposing there is an existing highway system established for the benefit of Worcester; or else it is true, that so strong are the affinities of this region of the country towards Fitchburg itself—so irresistibly do we tend into one another's arms—that even an artificial system of highway impeding cannot prevent us from celebrating the new state of things. But I ought to remind you that the proposition derives real affirmation from a gentleman of entire purity and official integrity, I have no doubt, Mr. Otis Adams; who narrated this somewhat remarkable state of things. He laid out three highways which had been the subject of public interest during his administration in office, and of these he said two of them did lead through the town of Fitchburg; and with regard to both of them, too, he said they did also shorten the distance, and facilitate the connection be-

tween the terminal points and the city of Worcester, and therefore they did directly tend to connect certain remote agricultural points in Worcester with this great local centre, and the fact that they did it by going through Fitchburg was not considered a sufficient objection to laying them out. But the minute a road was proposed for the benefit of a thriving little manufacturing locality there, leading to us and not leading to Worcester—although supported by the entire ability of Fitchburg—the road was refused and never built. It may be that my brother Aldrich is more than three-quarters right, when he suggests that the highways of Worcester have, in all times past, been built mainly for the building up of Worcester, less than for Fitchburg, and therefore it may be true that there will be to that extent an increase of expenditure. I throw that out as illustrating the tendency to centralization, of which I shall have hereafter a closing word or two to say, and pass on to other matters.

I believe that my second proposition is established. I believe that I have presented you a case of an area big enough for a county, which is grieved, and not "*eased*" in regard to its county accommodations, and that the whole difficulty would be relieved by the establishment of a new county.

I ought to bear in mind that an item of set-off has been insisted on by the other parties, on which it is proper that I should say one word. They say, be it that you mend the matter of distance, and the extent of the docket, and the probable chances of a speedy administration of justice, there are still certain matters of expense which you will have to meet. It is no doubt true, in the first place, to some extent, that we increase our own county burdens a little. We have got to erect new county buildings,—and we shall only be too happy for the chance to do it,—and we are to be at the expense of administering our own affairs; and beyond all doubt here will be some slight additions to our expenses. Two or three considerations upon this point I am sure you will indulge me in. But with regard to this expense of the county buildings, which we shall be called on to construct, I apprehend much consideration of details would be thought inappropriate by the Committee. It is enough to say,

that the opinions of our friends the Middlesex Commissioners,—founded on the opinions of witnesses, proceeding on the experience of a county tax of \$83,000 and a debt of \$195,000,—may be laid entirely out of your consideration. I am astonished only to find that men of sense could be brought to express the opinions which they laid before this Committee. They are a great deal too magnificent for our condition of life. *Vix aera nostra voco!* They are a great ways beyond us; and it is among the felicities by which we shall reconcile ourselves to our removal from Middlesex to Worcester,—if we shall pass from such a magnificent theory and estimate as this, under the bane of precluded convenience and taste, according to the example of our fathers, our laborious life, and our accumulated but middling means,—that we have nothing to do with this magnificence. You might as well estimate how much it would cost to build a Bunker Hill Monument in the new county! They tell you the difference between brick and granite is not very material; and Fitchburg is admitted to abound in granite, which is at hand. Well now, the Court House at Greenfield, two years ago, was built for \$14,658, of brick, and stored with its adequate furniture for \$630; making a total of \$15,288;—and who comes here to say that it is not amply sufficient? Fifty thousand dollars and seventy-five thousand dollars, indeed, as the estimate for the cost of these buildings! I shall be obliged, by and by, to remind you whether or not it has not happened, more than once, that these great expenditures are attributable to a secret policy, of which this Committee could only disapprove. Well now, for every accommodation of prisoners, their stone jail cost only \$6,000; and their stone was drawn eleven miles. I only say, therefore, that these estimates are extremely extravagant. I will not say they are in bad faith. Some may guess whether this great monument was not built on Leohmers Point, to rivet the union of Cambridge and Middlesex. You know better than I how that may be; how far policy—which we cannot develop, and which we do not respect if we could—might have influenced such expenditures as these. The real fact is, that until these great palaces at Middlesex and Worcester were built—and by which we are to be dazzled, and dis-

couraged, and debauched—there were not more than two or three court houses in Massachusetts that had cost over \$20,000, except that of Dedham. I have heard it said that that beauty and taste displayed at Dedham—I think an expenditure of \$40,000, at last, in amount, and altogether—was the result of an arrangement to suppress a projected change of the shire town from Dedham to Roxbury. However that may be, I am not the man to grudge the expenditure of a single dollar for the erection of that beautiful temple of justice at Dedham; and I hope the friends of the new county, at whatever cost, will erect one at least as tasteful and as convenient as that. Every one of their Worcester court houses, down to 1842—more than one hundred years from the time when that county was carved out of Suffolk, Middlesex and Hampshire—had cost, their entire expense—but \$18,000; and yet how eloquently does our friend, Governor Lincoln, enlarge upon the pride and the satisfaction with which a Worcester man may look upon the splendor of the edifices and establishments, which he contrasts, himself, with the expenditures of other counties. That is the first observation I have to make on this matter.

The second observation will be briefer,—that is to say, if we go off; if we do not break jail—if you set us off; we shall take our share of what we have paid for; shall we not? Has not that been the uniform practice of this Commonwealth since starting? Whenever the legislature sees fit to make a division, is not that the theory?

Perhaps I ought to give the committee a reference (Vol. iv., new series, page 442,) according to which it seems to be quite the settled practice to charge on the retiring county her share of the debt, and give her a share of the property. It is not the case of a hired servant running off, but of a daughter married, of a son made free—portioned off with the emotions and the wealth of the old home.

The third remark I have to make under this head, is, that we shall save in that economy which belongs to small corporations. It is the great corporations—from the fact that there is felt to be the possession of much wealth, and that the area is large—that spend magnificently. Give me a county of 50,000

persons, and every man is responsible to every other man, and every expenditure is upon a style of reason and taste and accountability which is based upon that fact. I hope you will run over certain statistics which have been presented, from which it is perfectly apparent that Norfolk, Plymouth, Barnstable, and Bristol—all with a population of 245,800, and a valuation of \$113,920,000, four county organizations, and five court houses—raise a county tax, and incur a county expense, of \$68,200 in a year: while Worcester, with a population of 130,000 and a valuation of \$55,000,000—that ought, in that proportion, to expend but \$32,000 in a year—spends \$50,000, and next year will spend \$60,000. The reasons are perfectly manifest. They are founded in the nature of man, and need not therefore be insisted on.

My brother Aldrich read a statement, in taking leave of this part of the case—to which, as it will occupy but a moment or two, I will advert, and then pass on to a final consideration of the only remaining proposition in the case—showing that the expense of the board of prisoners, and the maintenance of jails and houses of correction in the river counties, exceeds that of Worcester. Two observations are here exceedingly apparent. In the first place, it is nothing to the purpose, for this reason,—it is possible that the best method of economy may not have been embraced in the portion that borders on the river. The true question is, do those expenditures rise one farthing above what they were when the entire three counties were together? being apportioned man to man, valuation to valuation. In the next place, my statistical friend entirely omitted the larger items of transportation of prisoners and the cost of Commonwealth witnesses; and if they were reckoned it is not unlikely at last that the whole argument, founded upon these statistics, would be answered by the statistics themselves.

I will make another suggestion in regard to the increased expense. It will be some comfort to know that if we raise a larger tax we shall spend it among ourselves. That is something. It will not go to a beloved, but a mother county, after all. If we are to erect judicial county buildings within the city of Fitchburg, or in the locality anywhere, the disbursements will be

made there. If our county tax is to be enlarged, what it buys goes into our own pockets. Look at Mr. Mansur's statistics as they have been presented here,—statistics, I may be permitted in this respect to say, which he collected from the testimony of Mr. Billings, and which he—although he has been present, and in attendance—has not contradicted in the slightest degree. He has not been called to contradict them. Mr. Mansur shows you, that while we pay of this entire county tax of Worcester, a quarter part, the average of all we receive from it, does not exceed, perhaps, one seventh, at most a fifth. Our money does not flow back to us. And therefore, I reply to him who tells me our county expenses are to be increased, that our county disbursements are to be enhanced also. Take a single item. Mr. Mansur's statistics show you that we pay one-quarter of the entire county tax. The highway expenditures ought to be in that proportion made upon our soil, unless there is some policy to divert travel from us. The entire land damages are \$50,000. Of this, do we receive one-quarter? Not one-seventh.

The whole number of commitments was 857, of which, I am glad to say, we supplied but 81—not one-tenth; but we paid for a fourth. The whole number of other causes was 275, of which we contributed 57; which is about a fifth. So that, I repeat, although we pay a quarter of the county tax, we are not reimbursed by the disbursements of which that county tax should be the expression.

Let me put you another thing;—perhaps I have overrated the importance of it;—but suppose there is an increase of county expenses, at last—I beg the Committee to judge of this; what is the effect of it? The public is charged, and individual seekers for justice are relieved. That is the effect of it. As I read the Constitution, we are bound to furnish to every suitor for justice a Court House, a learned Bench, a sacred right of Trial by Jury,—to furnish it to him inexpensively and without delay; and we mean to give it to him by the establishment of a new County, even if it cost the county purse a trifle beyond our estimate. So the effect will be that the public will pay, and the poor suitor for justice—unhappy and unfortunate

whether he wins or loses—will be relieved, conformably to the laws.

Next to all this, our learned friends are a little afraid that we shall not take as scientific and humane care of the poor and insane as they are taking now of them in the County of Worcester. Very far, indeed, be it from me to depreciate any of the noble charities of Worcester, or the manner in which she conducts them under the law. But why should not we take care of the poor; find a chaplain, and a physician for the mind, as well as they? Why not? Are we not a population able to do it? Are we not a humane representation of the people of the State? Reform and progress!—reform in philanthropy; progress in science! Does that sun cast its rays at so great a distance from us that we do not share with the rest? I submit there is nothing in the argument. There is no reason to doubt that we should perform every duty which the law and philanthropy demand of us.

Among the ten thousand objections which the learned counsel had to make to the separation, I was a little struck, and I rather think the Committee will be a little struck, with this: that they did not, any of them, insist that philanthropic and religious associations and ties were likely to be sundered by the division of the County. But have we not proved, by the testimony of Mr. Everett, that she is this day so large that her philanthropic and religious associations are sundered by her very extent; that they are already weakened from this cause? Mr. Everett testified that "one reason, in his mind, for the division, was found in the increased facilities it would give for philanthropic, religious and agricultural associations; that, owing to the great inconvenience arising from extent of territory, some of the old County associations have been divided, and new ones formed for Worcester North;" yet they prefer to find themselves surrounded by County organization. So that, too large for these ties, they will be sundered by the necessities of the case; and the organization for which we look to you will quicken them into a new and useful life.

I have one other observation to make—if it were only from the profoundest regard for my excellent friend and brother

Dana—to the objection, so very eloquently put by him, in regard to the unwillingness of the people to be set off; for the reason, he said, that his clients appreciated that portions of their soil were illustrated by so many memories of glory. Now, I have no doubt that some persons may feel this emotion, or may think that they feel it;—very few can express it as he did. The masses do not feel it. As I said before, we originally had majorities in their towns in favor of this separation; and my learned friend—who knows how much I respect him, and generally and habitually, how much I sympathize with him—will permit me to say, that they are right and he is wrong. His eloquent appeal forgets how large and grand are the emotions which the names of Concord Bridge, and Lexington Green, and Bunker Hill, and Harvard College, excite in every mind. Does he think, that to the fullest draught of those most luxurious emotions, and all of them, it is necessary that a man should have been born in Middlesex? Does nobody but a Harvard College graduate walk with his eyes veiled beneath those arches, and bow in profoundest emotion beneath the great monument yonder? Sir, my learned friend will give me leave to say that he forgets entirely the nature of this emotion. He has not a client in the world that will enjoy this species of emotional repast a particle the less, after the division we ask for shall have been granted than before. Does my brother think, for example, it is necessary that a man should be born in Middlesex, in order to enjoy it, as we all enjoy it, at the base of Bunker Hill? Does not he very well know that every New Hampshire man there, as he remembers Stark and Bennington; and every Connecticut man, as he remembers Knowlton and the Light Infantry; aye, and every South Carolinian who wears the Palmetto in his hat-band—does my brother doubt for a moment, that every one of them casts the symbol of treason under his feet, and gives himself over, as we all give ourselves over, to a share in this emotion—recognizing the presence and power of a glory, and a memory that belongs to us all? I take from no man in Middlesex the slightest emotional repast that belongs to him as a citizen of the country to which we all belong, when I propose to assist him in attaining

the administration of justice more easily and cheaply than he gets it now.

There remains only my final inquiry, and that is whether—having established my second proposition, that this area, large enough for a county, will be greatly relieved by the establishment of a new county—we shall do any thing toward incommoding the residue of Worcester and Middlesex, in the regard for which counties are created. Will that bear a moment's argument?

Take the case of Worcester. Still we leave her the largest county in Massachusetts, with an area of 1,100 square miles, a population of 95,000, and a valuation of \$41,225,000; and with forty towns—more than all she had in 1840. In regard to Middlesex, we leave her with 740½ square miles, a population of 147,436, a valuation of \$78,000,000, and forty-five towns. I put it to the conscience and honor of every gentleman on this committee, and in this legislature, if it can be said anywhere, for one moment, that we unfit either of those respectable organizations, or weaken them in the least degree, for the discharge of every duty for which counties are made. Will not their judges be as learned, their docket as small, and their judgments as prompt? Will not their highway system be as perfect as it now is; their registry of deeds as accessible as it now is? If so, I submit that there is an end to the controversy. I take it that Middlesex cares nothing about this matter. I do not believe that she knows that five towns of hers are in much danger, although the county commissioners feel themselves, in a general way, charged with the care of the county, and therefore some of them happened to testify to it. In regard to the case of Worcester, I think—although they may reject it as presumptuous—that I enter into every feeling which an educated and ancient citizen of Worcester can possibly have in regard to this matter. I recognize that there is some slight degree of feeling on this subject; I know very well that the division curtails some of those proportions that unfit her for the office of a county: something is taken from her boarding-houses and hotels; something, very possibly, from the business of the local bar; something, possibly, from that great central power,

on which it may be my duty, or may not be my duty, to say something in the kindest feeling to anybody, at last. But no man, woman, or child is deprived of any thing to which he or she has a right. You give us that which is the breath of life; you take from nobody else—man, woman, or child—anything to which he or she has a right. You take from none anything which a single turn of the great wheel of that vast, unreturning progress may not one day take from every man. Still Worcester remains the heart of the State; still her general wealth, her society, her agriculture, her press, her professions, will adorn, and arm, and guard her. Is it not a mere imagination, after all, that so much influences these great counties against division? As I said before, there was one county which we might have supposed to be guarded against division by every emotion of our hearts; by every memory; by every imagination. That was the county of Hampshire. I have already stated, you remember—what I can never forget; what I have so often heard our great departed friend enlarge on—how Hampshire stood shoulder to shoulder with us in 1787, when the great inland fell off; Hampshire, without a ship upon the sea, stood by the coast for the making of the federal constitution; and I can appreciate how well the men of 1812—how all men of all times should have continued to love her,—yet for “the ease of the people” we divided her as if she had been an orange, and not one charm, physical, or moral, or social, has fallen from her beautiful frame; not one!

“Thou art not vanquished! Youth and beauty still
Are crimson on thy lip and cheek, and Death’s
Pale flag is not advanced there!”

And so shall it be with Worcester.

I have argued this cause with every possible disadvantage—upon very narrow, and, as I conceive, very exclusive and legitimate grounds—down to this instant, exclusively on the ground that counties are made to facilitate the administration of justice, and that we have not the facilities we ought to have; that we are burdened and grieved in the administration of justice, for which the State was made, and the County was made. But I

ought to remind you, that—as I take my leave of this discussion—there are certain considerations which will occur to the lawgiver, which are a great deal too big for my brief; and on which I do not, and should not feel at liberty, representing my clients, to attempt to instruct this legislature.

Are there not some evils in the existing state of things more delicate, more flexible, less palpable to any sense; but larger, at last, than any on which I have insisted? Will any of my learned friends from Worcester, give me leave to ask, if you would to-day,—having regard to these larger considerations, on which I will say a word,—make such a County as Worcester, irrespective of every one of the facts and reasons on which I have already been having the honor to insist? Is it mere unmeaning language, or is there a good deal of truth in the remark, when I ask if there is not a tendency there to the centralization of wealth, power, and influence, in the city; and to a kind of subordinated provincialism everywhere else, to a considerable extent? Is there any thing in that, or not? Not that it is a reason, in itself, for the division, let it be appreciated; but, is there any thing or not, in the suggestion? I put it to your judgment, and your observation of Massachusetts life, that there is a tendency there to this result;—that whatsoever 1,600 of square miles, and 130,000 of population can command, of office, and honor, and consideration, is thought to belong to the city of Worcester; and that if the city of Worcester is satisfied, everybody else is bound to be satisfied also. Is there or not a tendency to that? It is no fault of those who are living there—but is it not so? Is there not a tendency to this result;—that those 1,600 square miles, and 130,000 persons can command more there to-day, than 1,600 square miles and 130,000 persons can command anywhere else in Massachusetts—and pretty intensely centralized at that? Were you starting to-day, would you make it just as it is? Look at the city of Worcester! How beautiful in situation! That long street thronged with business; those heights crowned with peaceful homes; with the asylums of the unhappy; the monuments to religious tolerance! Look at her list of great, and public men—the living and the dead! I admire and recognize

it all—*non equidem invidetur miror magis!* And yet, is it not true that the pearl, and gem, and jewel, that revels and sparkles there, has been taken from many a mine, and bed, and stream that is darker and poorer for it, elsewhere?

On the other hand, would there not be some compensation in calling out new County life into being, in North Worcester? He who plants a seed; he who educates a child; he who makes a County life or a State life, does a great thing. Will it not be a great thing to sow the seeds of a new County life in North Worcester? Let that be appreciated among the compensations on which I have the honor to insist. Will it not operate to equalize all things somewhat more than they are equalized to-day,—honor, and profit, and consideration, and all the things for which able men think it worth their while to live and exert themselves? Do you not know that the effect would be to equalize all these things somewhat, upon that which exists to-day? Will not enterprise, and local pride, and local hope, be touched at once into energetic existence? Will not a new seat of business and influence emerge—two blades of grass grow where one grows now? Will not business, professional talent, political expectation, stay at home and ornament their own Sparta? These are things too big for my brief; but I submit to you they will not be thought entirely undeserving the attention and consideration of this committee.

I have done with this argument, and I have but a word to add. In the first place, remember, if you mean to do any thing for us, it is a new county only that you can give us. They will not give us a shire. We have tried that, and they will not give it to us. Here are eight and forty thousand of us, twenty-eight miles from court, and we cannot get a shire town. If that will be less burdensome to any body, why don't they give it to us? Middlesex breaks up into three, Essex into four, Hampshire into two, Bristol into two. They won't give us one beyond Worcester. If you do any thing for us, it is a county we want; and that is all.

In the next place, if you are ever to do any thing for us, *now is the time*. Does not he "give twice who gives promptly?" If there is evil to be redressed; good to be done; is not to-day

the time for the redress, and to-day the time for the good to be done? Why should a single heart be broken by the delay of another year in the pursuit of justice? Remember, one of the difficulties which they urge here, is the matter of the records of title deeds. They are multiplying every day. They grow worse every day. If they are to be transferred and copied, it is easier to-day than it will be hereafter.

Gentlemen, in the third place, if there is any thing to be done, for God's sake, let it be that *you do it*; and not that it be referred to any body else, anywhere else, to do your work for us—to do your work, shall I say, for you. Will you do it for yourselves? And that brings me to remark a single closing word upon the suggestion made on the other side: that all the legislature would do would be to refer it to the people of the County of Worcester. It would be in bad taste for me to say a word upon those broader objections to referring a matter of this nature to the people, under any form which would occur to the legislature, and which occurs to me, but which did not seem with propriety to fall within my province to suggest; yet as we are all citizens, I may be permitted to refer to the matter. To make a new county is to make a law—to make a good and a wholesome law; an act of pure, sheer, mere legislation: touching the people, it is true, as every thing touches the people. I have the honor to say then, that, being such, the people are to have no participation in that act. The act which you do is not to be shared by them, except to be obeyed by them; or except that next year, disliking it, they vote your seats vacant, and fill them with better representatives. Is there any thing truer than this? In this place, is there any thing that can be with more freedom and propriety said than this,—that the people and legislature are perfectly distinct? That great sovereign makes the Constitution; establishes the Government; is the fountain of shame and honor; elects every one of you to office; and that done, retires and reposes, and waits for your action; and after that has been done, I submit to you the Constitution knows nothing of them—knows nothing at all of the power in the people to share with you in an act of the legislature; and it knows nothing of any power in the

people whatever, but to petition respectfully, to instruct, to assemble in convention, to change the Constitution at the polls, and change the representatives themselves. After they have built the State; established the Constitution; established the government, and have chosen their rulers, and elected you to office, you are their rulers; and he who comes to tell you they may take part with you in the making of a law, I respectfully submit, has some secret design in his own heart that poisons the utterances of his lips. I say, that whether it is the division of a county, or the enactment of a law of temperance, or the promulgation of a dogma of religious freedom, or the organization of the militia, or whatsoever it is, the people are to take no part in that transaction, except to obey the law as you prescribe it.

There are two or three reasons, on which I think I have a right to insist for a moment or two, independently of these general considerations, on which I did not mean to say a word—I said them because my heart was full, and because I have said them once before. In the first place, then, consider that the effect of referring this matter to any locality is exactly this—if we are right in believing that the city of Worcester loves to have us stay; if we are right in believing that Worcester desires to retain us; then we have a right to fear—that if such a question as this, were put to this locality to-day, every influence which she may command would be brought in requisition to affect public opinion against us. If by offering public office; if by offering that great purse for the construction of a railroad this way or that way; if by touching this man's traditional veneration, and that man's political hopes, it may make a voter; there is danger that you call her out into an activity for which we shall be no match at all. I only say, Sir, that our position in the North of Worcester is this: that our interests require us to move out from these people; leave them by their pyramids; and with their glory, and their history; and we want no temptations which would lead them to pursue us by sea or desert anywhere—but only to let us go.

In the next place, we have this difficulty—and it is one that

I have very many times in the course of this discussion said something on—that the moving inducement to a new County, is the burden we feel in regard to the administration of justice. Where does that burden fall? Not, perhaps, on the majority of our numbers; not on the menial of the law—as he is called by some of the witnesses on the other side, Mr. Wilder and Mr. Bassett;—not on the thousands and thousands of agriculturists among us; not even on the larger capitalists; but it falls mainly on others; the operative, the laborer, and middling man,—living by his wits, with his fortune to make. There it mainly falls; and therefore, I say, if you present that question, whatever may be its merits, to a community like that—one man shall go to a farmer and say—“Sir, your lands will not be worth so much by twenty-five per cent.,” and another man is moved by other influences—there is great danger of the practical consequences that may follow everywhere and to everybody; that is to say, a proposition like this, unquestionably develops the latent selfishness of every human being. Every town wants to be a shire town; every trader wants to avoid every thing that shall build up the trader in a neighboring town into a more intense and formidable competition.

One of the witnesses says that he thinks the effect of creating a new county, and making Fitchburg its shire, would be that the traders would sell more goods and drive a better business than they do themselves to-day. And therefore it comes to this: that one town is touched off by the suggestion that if the matter is postponed it will be a shire town; another, by the suggestion that if a railroad shall be built here or there perhaps it will come that way; and the result is exactly this: that you will have established a precedent which is entirely without example in the history of the Commonwealth. There is not one case in which the legislature of Massachusetts has so far retired from its high general vantage ground as to evade deciding a question themselves, and throw it abroad as an apple of discord among the various elements of the community. I do not suppose that these concluding observations were made necessary by any thing in the condition of the mind

of the Committee. They were rather in reply to particular observations of the counsel on the other side. I feel that I carry every moment a heavier weight of gratitude to the Committee—harder every minute to bear, and perhaps impossible more and more to requite. I leave the cause, however, without another word, in the hands of the Committee.



This book should be returned to
the Library on or before the last date
stamped below.

A fine is incurred by retaining it
beyond the specified time.

Please return promptly.

DUE APR '65 H

~~CANCELLED~~
~~425813~~

~~CANCELLED~~
MAR 3 '66 H

~~CANCELLED~~
946367

~~CANCELLED~~
DUE MAY '71 H

298620

FEB 11 1985

123899

~~CANCELLED~~

US 13123.1.45
Argument for the division of Worces
Widener Library 004397455



3 2044 086 358 165

